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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

NO. 72-184

THOMAS PAUL RAIMONDI,
Petitioner,

v.

STATE OF MARYLAND,
Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS
OF MARYLAND

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NO. _____

THOMAS PAUL RAIMONDI,
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PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

PETITION FOR WRIT OF CERTIORARI

Thomas Paul Raimondi, Petitioner, prays that a Writ of Certiorari be issued to review the Judgment of the Court of Appeals of Maryland entered April 4, 1972 (265 Md. 229, 288 A.2d 882 (1972)), affirming the Judgment of the Court

of Special Appeals of Maryland entered June 23, 1971, in affirming the conviction under Indictment No. 7866 of the Criminal Docket in the Criminal Court of Baltimore City, in the case of Thomas Paul Raimondi, Appellant v. State of Maryland, Appellee, No. 554, September Term 1970 (12 Md. App. 322, 278 A.2d 664 (1971)) Petitioner's Motion for Reargument filed May 1, 1972; Motion for Reargument denied by Court of Appeals of Maryland on May 8, 1972.

CITATIONS TO OPINIONS BELOW

Mandate dated May 9, 1972, of the Court of Appeals of Maryland confirming the Judgment of the Court of Special Appeals of Maryland No. 554, September Term, 1971, with notation Motion for Reargument filed May 1, 1972, Motion denied May 8, 1972. (App. 1).

The Opinion of the Court of Appeals of Maryland No. 281, September Term, 1971, reported in 265 Md. 229 (1972), 288 A.2d 882 (App. 2).

Opinion of the Court of Special Appeals of Maryland No. 554, September Term, 1970, reported in 12 Md. App. 322, 278 A.2d 664 (App. 6).

The Opinion of the Court of Special Appeals of Maryland 471, September Term, 1969 reported in 8 Md. App. 168, 261 A. 2d 40 (App. 24).

Memorandum Opinion of the Criminal Court of Baltimore dated September 26, 1969 (unreported) (App. 32).

The Criminal Court of Baltimore City has stayed the service of sentence of the Petitioner pending the filing and disposition of this petition in the Supreme Court of the United States (App. 51).

JURISDICTION

The Judgment of the Court of Appeals of Maryland sought to be reviewed was filed on 4th April, 1972. A timely Motion for Reargument filed on 1 May, 1972 was denied on 8th May, 1972. This Petition for Certiorari was filed within ninety days of the latter date. Jurisdiction of this Court is invoked under Title 28, Section 1257 (3) of the U.S. Code.

QUESTIONS PRESENTED

1. Was the Petitioner deprived of due process of law guaranteed by the Fourteenth Amendment of the Constitution of the United States by the abuse of discretion of the trial judge in permitting the jury to take exhibits of transcripts of electronic recordings to the jury room?

2. Was the Petitioner deprived of his right to be confronted with witnesses against him under the constitutional protection of the Sixth Amendment of the Constitution of the United States by the trial judge in permitting the jury to take exhibits of the transcripts of electronic recordings to the jury room?

3. Was the Petitioner deprived of due process of law guaranteed him by the Fourteenth Amendment of the Constitution of the United States by the denial of the Criminal Court of Baltimore City of the Petitioner's Motion to Dismiss the Indictment due to pre-trial publicity in violation of the Petitioner's absolute constitutional right to a speedy and fair trial?

4. Was the Petitioner deprived of due process of law guaranteed by the Fourteenth Amendment of the Constitution of the United States by the prosecutor in his conduct and method and content of his argument?

STATEMENT OF FACTS

This case arises out of the election in 1969 by the General Assembly of Maryland of a Governor to succeed Governor Spiro T. Agnew, who had resigned, on January 15, 1969, to take the office of Vice President of the United States on January 20, 1969.

On December 19, 1968, the Grand Jury of Baltimore City returned a One-Count indictment, charging the Petitioner with attempting to bribe John J. Bishop, Jr., a member of the Maryland State Senate by offering to pay Bishop a substantial sum of money to obtain the votes of Republican members of the General Assembly of Maryland in favor of a gubernatorial candidate to be selected by the Petitioner or by *those for whom the Petitioner was acting*, (emphasis added), to fill the unexpired term of the former Governor, now Vice President Spiro T. Agnew.

On the same day the indictment was returned, the State's Attorney of Baltimore City issued a press statement for immediate release (App. 32).

Immediately prior to the public release of the press statement the State's Attorney called a meeting of legislative leaders of the General Assembly to confer in his office. The State's Attorney advised the attending legislative leaders that electronic evidence incriminating the Petitioner had been obtained and that he had primary evidence of the Petitioner's guilt.

The disclosure of the indictment against the Petitioner and the sensational nature of the charges coming only about three weeks before the interim Governor was to be elected by the General Assembly resulted in immediate and extensive press, television and radio coverage. On February 9, 1969, the Petitioner filed a Motion to Dismiss the Indictment, alleging that his case "has received so much publicity that he could not obtain a fair trial anywhere in the State of Maryland in the forseeable future . . . "

After two public hearings on the Motion to Dismiss the Indictment the Criminal Court of Baltimore, on December 26, 1969, denied the Motion (App. 32). The Petitioner filed an Appeal in the Court of Special Appeals of Maryland, which Appeal was summarily dismissed without hearing or the record being reviewed. *Raimondi v. State*, 8 Md. App. 168, 261 A.2d 40 (1971) (App. 24). Petition for Writ of Certiorari denied by the Court of Appeals of Maryland, February 10, 1970.

At the trial of the case, four electronic recordings of conversations between the Petitioner and the State's chief witness, Bishop, were played back to the Jury. The Jury was given transcripts of these recordings, over the objection of the Petitioner and members of the Jury were permitted to refer to them during the playing of the recording, and during the argument of Counsel, and they were also given the transcripts to take into the Jury Room – all over the objection of the Petitioner (App. 60).

The chief prosecuting witness, Bishop, brought into the conversation with the Petitioner, the name of Mr. Dale Anderson, County Executive for Baltimore County, as being the Petitioner's candidate, and as the Petitioner put it, he agreed with everything Bishop said. The Petitioner also brought in the name of M. William Adelson, with whom he had once been associated in the practice of law, as being one of those interested in the deal. Adelson and Anderson both indignantly denied having had anything to do with such a scheme, and the record is completely devoid of any evidence that they did, or that they had any knowledge of it other than Bishop's recitation of what the Petitioner had told him. (App. 11).

The Petitioner testified that there was no real scheme to buy votes and that he had no connection with either Adelson or Anderson and the entire episode was a hoax. (App. 53).

During the course of the trial, the State's Attorney attempted to influence the jury improperly by inference that the Petitioner and his witnesses were political bosses, dishonest and unworthy of belief, and in closing Argument

the prosecutor appealed to the jurors' passions and prejudices rather than to their reasoning from the evidence in the case. (App. 54).

The Petitioner raised this objection on Appeal, but the Court of Special Appeals of Maryland, *Raimondi v. State*, 12 Md. App. 322, 278 A.2d 664 (1971) refused to consider the point under Maryland Rule No. 1085. (App. 20).

The Petitioner was found guilty by the Jury and was sentenced for a period of eighteen (18) months in addition to a fine of $500.00.

Petitioner filed an Appeal to Special Court of Appeals, which affirmed the judgment. *Raimondi v. State*, 12 Md App. 322, 278 A.2d 664 (1971). Certiorari was granted by the Court of Appeals of Maryland after which the Judgment was affirmed, *Raimondi v. State*, 265 Md. 229, 288 A.2d 882 (1972).

REASONS FOR GRANTING THE WRIT

I.

THE PETITIONER WAS DEPRIVED OF DUE PROCESS OF LAW GUARANTEED BY THE FOURTEENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES BY THE ABUSE OF DISCRETION OF THE TRIAL JUDGE IN PERMITTING THE JURY TO TAKE EXHIBITS OF TRANSCRIPTS OF ELECTRONIC RECORDINGS TO THE JURY ROOM.

Electronic recordings were made of four conversations between the Petitioner and State Senator John J. Bishop, Jr. After Bishop, the State's chief witness, had testified to the conversations with the Petitioner, copies of the transcripts were given to each member of the Jury, over the objection of Petitioner's Counsel, and the Assistant State's Attorney proceeded to read them to the Jury also over the objection of Petitioner's Counsel. The transcripts were then collected and at the end of the State's case they were offered in evidence and admitted over objection (App. 60).

Thereafter, copies of the transcripts were again distributed to the Jury and they had them in their possession during the argument both in chief and in rebuttal, also over objection, and the Assistant State's Attorney referred to them during argument and called the attention of the Jury to specific parts of the conversations as electronically recorded and as reproduced in the transcripts.

At the conclusion of Argument and the Court's charge, the State requested that the Jury be permitted to take the transcripts into the Jury Room with them, which request was granted by the Court, without any limiting instructions by the Trial Judge to the Jury concerning the transcripts, over objection by the Petitioner's Counsel. (App. 60).

Rule 757 of the Maryland Rules of Procedure says:

"The provisions of Rule 558 of 'Jury Room, What May Be Taken To', shall apply to Criminal cases".

The pertinent parts of Rule 558 are:

a. In the Court's Discretion

Upon retiring for deliberation, the Jury may take with them into the Jury Room such of the proceedings, granted prayers, or written instructions, and exhibits which have been received in evidence, as the Court may deem necessary for a proper consideration of the case.

b. As of Right – Notes

The Jury may also take with them Notes of the Testimony or other proceedings taken by themselves, but none taken by any other persons.

c. Return to Clerk

All such papers or exhibits, except the Notes mentioned in section (b) hereto, shall be returned to the Clerk before the Jury is discharged.

d. Exception.

A Deposition may not be taken into the Jury Room except by agreement of all parties and with the consent of the Court.

Ingalls v. Crouch, 35 Md. 296, 298 (1872) held that permitting the jury to take into the Jury Room the Plaintiffs' affidavit filed in support of their declaration was reversible error. In *Moore v. McDonald,* 68 Md. 321, 333, 12A. 117

(1888), the Maryland Court of Appeals held, in a caveat case, that the original Will under attack could be taken into the Jury Room only with the consent of the parties, and not as a matter of right.

The pre-trial press release of the State's Attorney stated that the Petitioner, "acting for himself and ostensibly for others did offer Senator Bishop the sum of . . ." and the indictment stated, "by those for whom the Petitioner was acting". (App. 33).

The main thrust of the State's case centered upon the theory that the Petitioner was acting in concert with one, Adelson for the benefit of a candidate, Anderson. The record clearly shows that the State vigorously attempted to portray to the Jury a scheme, devised by the Petitioner, Adelson and Anderson, to purchase votes. There was no evidence of any such scheme and the State failed in its attempt to show one. This lack of evidence was noted by the Court of Special Appeals, which affirmed the Judgment, *Raimondi v. State*, 12 Md. App. 322; 278 A.2d 664, 668 (1971) (App. 11):

> "Mr. Bishop brought into their conversation the name of Mr. Dale Anderson, County Executive for Baltimore County, as being Raimondi's candidate, and as Mr. Raimondi put it, he agreed with everything Bishop said. Raimondi also brought in the name of M. William Adelson, with whom he had once been associated in the practice of law as being one of those interested in the deal. Mr. Adelson and Mr. Anderson both indignantly denied having had anything to do with such a scheme, *and the record is completely devoid of any evidence that they did or that they had any knowledge of it, other than Mr. Bishop's*

recitations of what Raimondi had told him (emphasis supplied). Mr. Raimondi testified that there was no real scheme to buy votes and that he had no connection with either Mr. Adelson or Mr. Anderson".

The Petitioner alone was charged under the indictment. The State had the burden to show that the Petitioner had expressed the willingness and the ability to produce the money to constitute an actual offer, *Raimondi v. State*, Supra, 669, (App. 14). If the Petitioner were acting alone the State would not be able to meet this burden. For this reason the names of Adelson and Anderson became material to the State's case. The transcripts of the recordings contained evidence relevant to the issue whether Petitioner was acting alone or in concert with Adelson and Anderson.

"Although Mr. Bishop made several efforts to have money passed between the Defendant and him, no money ever changed hands, nor did the defendant ever say that he actually had all or any of the money, nor was there any showing that he was in a position to get it if the deal progressed beyond the talking stage". Raimondi v. State, 278 A.2d 664, 667.

Permitting the transcripts to be taken to the jury room gave the State undue advantage, *Payne v. State*, 199 Wis. 615, 629, 630, 227 N.W. 258, 263; *State v. Solomon et al.*, 96 Utah 500, 509, 510, 87 P.2d 807, 811; To allow the Jury to re-read and re-read the transcripts of recordings was prejudicial to the Petitioner, *State v. Slater*, 218, Pac.2d 329, Washington State (1950). An exhibit which merely permits the Jury to read over again what amounts to oral testimony already given should not be sent out to the Jury Room, *Commonwealth v. Clark*, 123 Pa. Supr. 277, 187 A.237.

If the course of conduct followed in this case was proper then there is no limit to what the Jury may take into the Jury Room to consult during their deliberations upon the guilt or innocence of the Petitioner or any other defendant.

II.

THE PETITIONER WAS DEPRIVED OF HIS RIGHT TO BE CONFRONTED WITH WITNESSES AGAINST HIM UNDER THE CONSTITUTIONAL PROTECTION OF THE SIXTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES BY THE TRIAL JUDGE IN PERMITTING THE JURY TO TAKE EXHIBITS OF THE TRANSCRIPTS OF ELECTRONIC RECORDINGS TO THE JURY ROOM.

A portion of the Sixth Amendment of the United States Constitution holds that "in all criminal prosecutions, the accused shall enjoy the right to be confronted with witnesses against him" and Article 21 of the Maryland Declaration of Rights contains similar wording. The Maryland Court of Appeals has equated the sending of documents into the Jury Room of an evidential nature with that of sending a witness into the Jury Room. In *Moore v. McDonald,* 68 Md. 321, 12 A.117, the Court held "he has no more right to send, by the hands of the jurors themselves, into the Jury Room, a piece of documentary evidence which he believed important to his case, than he would a living witness". In other jurisdictions, the court has arrived at the same conclusion, as in *State v. Wilson,* 360 P.2d 1092, 188 Kan. 67 (1961) the court held:

> "We are of the opinion that when the court permitted the jury to take to the jury room the

transcript of Connie Porting's evidence and to keep such transcript throughout almost all of their deliberations, such action placed undue emphasis on her testimony; in fact, it was equivalent to sending the complaining witness into the jury room, where she continued to plead her cause. Such action of the trial court amounted to prejudicial error".

In *Payne v. State*, 199 Wis. 615, 629, 630, 227, N.W. 258, 263, the court stated:

"... it is obvious that to permit a jury to take the written portion of the testimony to the jury room compelling them to rely upon their memories for the testimony on the other side, gives one side of the controversy an undue advantage, and it would seem plain that such exhibits should not be permitted to be taken to the jury room. 2 Thompson, Trials (2d ed.) § 2578".

Also, in *State v. Solomon et al.*, 96 Utah 500, 509, 510 87 P.2d 807, 811, it was held:

"The law does not permit depositions or witnesses to go to the jury room. Why should a witness be permitted to go there in the form of a written testimony; State v. Moody, 18 Wash. 165, 51 P. 356; Welch v. Insurance Company, 23 W. Va. 288; Tabor v. Judd 62 N.H., 288".

It is amply clear from the cases that the courts have equated a witness in a criminal proceeding to that of the transcripts and that by allowing a witness, through his transcript to continue to plead his case the court would be violating the right of the defendant by not allowing him to, in turn, have his evidence either transcribed or to be personally

in the jury room to explain testimony of the prosecuting witness. Thus in essence the defendant has lost his right of confrontation guaranteed under the Sixth Amendment.

III.

THE PETITIONER WAS DEPRIVED OF DUE PROCESS OF LAW GUARANTEED HIM BY THE FOURTEENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES BY THE DENIAL OF THE CRIMINAL COURT OF BALTIMORE CITY OF THE PETITIONER'S MOTION TO DISMISS THE INDICTMENT DUE TO PRETRIAL PUBLICITY IN VIOLATION OF THE PETITIONER'S ABSOLUTE CONSTITUTIONAL RIGHT TO A SPEEDY AND FAIR TRIAL.

The gist of the Petitioner's Motion to Dismiss was that he was denied the right to be tried where the alleged crime was committed and to a trial by an impartial jury; which rights are guaranteed him by the Sixth Amendment of the United States Constitution. "In all criminal prosecutions the accused shall enjoy the right to speedy and public trial by an *impartial jury* (emphasis supplied) *of the State and District* (emphasis supplied) wherein the crime shall have been committed", and even more emphatically by the Maryland Declaration of Rights, "That the trial of the facts *where they arise* is one of the greatest sureties of the life, liberty and estate of the people" (emphasis supplied) (Article 20), "That in all criminal prosecutions every man hath a right . . . to a speedy trial by *an impartial jury*" (emphasis supplied) (Article 21) and "That no man ought to be taken or imprisoned, deprived of his life,

liberty, but by the judgment of his peers or by the law of the land". (Article 23).

If a prosecutor is permitted to give this or any other case unrestrained pre-trial publicity, then a subsequent trial by jury would be an empty and meaningless rite. Public statements as widely disseminated as these were, stating that a crime had been committed, that there were in existence tapes which proved criminal acts and that the person who brought the matter to light is to be commended for his courage, cannot be cured by the use of voir dire or cautionary instructions. As the Supreme Court said in *Krulewitch v. U.S.*, 366 U.S. 440, 69 S. Ct. 716, "The naive assumption that prejudicial effects can be overcome by instructions to a jury cf. *Blumenthal v. U.S.*, 332 U.S., 539, 68 S. Ct. 248, 257, all practicing lawyers know to be an unmitigated fiction". To the same effect, see *Bruton v. U.S.*, 391 U.S. 123, 88 S. Ct. 1620.

In considering the effect of the publicity upon the public, we ask this court to take judicial notice of the fact that the crime alleged is intertwined with the election of now Governor Mandel by the State Legislature, the first election of its type in Maryland's history and the first time in history that a Governor of Maryland has become a Vice-President. See: *Commonwealth v. Killgallon*, 379 Pa. 315, 108 2d 780; *Rideau v. Louisiana*, 373 U.S. 723, 83 S. Ct., 1417, (1963).

The State claims that if the Defendant's motion were granted the State's right to prosecute would be frustrated. Our Constitution has always proclaimed that the individual's rights should be jealously guarded and to say that these rights should take a second place to the right of the State to obtain a conviction has no backing in the law.

Experience has shown that law enforcement officers are able to obtain convictions in proper cases without the use of confessions unlawfully obtained. By the same rationale there is no justification for a State's Attorney to appear on television and by this means and the use of newspaper and radio give State-wide publicity to his version of the fact in this case to such an extent that the Petitioner cannot have a speedy and fair trial any place in the State.

If the Petitioner's Motion had been granted the State would not have been disadvantaged, as it is the duty of the State's officers to guard the rights of its citizens and not to seek to have them abridged.

This case presents a frequently recurring problem in the administration of criminal justice – pre-trial publicity by law enforcement officers – a problem deserving of this Court's time and attention.

IV.

THE PETITIONER WAS DEPRIVED OF DUE PROCESS OF LAW GUARANTEED BY THE FOURTEENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES BY THE PROSECUTOR IN HIS CONDUCT AND METHOD AND CONTENT OF HIS ARGUMENT.

The State, by improper questions asked on cross-examination, attempted to influence the jury improperly by inference that Petitioner and his witnesses were political bosses, dishonest and unworthy of belief, and in closing

argument the prosecutor appealed to the jurors' passions and prejudices rather than to their reasoning from the evidence in the case. (App. 54).

It has been uniformly held in Maryland that the conduct of the State's Attorney should not be such as to be apt to instigate prejudice against the accused. *Contee v. State*, 233 Md. 584, 165 A.2d 889.

The leading Maryland case on improper arguments by a prosecutor is *Holbrook v. State*, 250 A.2d 904, 6 Md. App. 165 (1969). This case sets out the standards to which the prosecutor must adhere during the course of the trial. It is stated:

"In short, the prosecutor should make no remark calculated to unfairly prejudice the jury against the defendant. *Newton v. State*, 147 Md. 71, 92, 127 A.123, 132; *Meno v. State*, 117 Md. 435, 441, 33 A.759".

The Petitioner urges that the misconduct of the prosecutor denied the Petitioner a fair and impartial trial. The Petitioner raised this objection on Appeal, but the Court of Special Appeals of Maryland, *Raimondi v. State*, 12 Md. App. 322, 278 A.2d 664, 672, stated:

"Appellant contends the cross-examination and argument of the State's Attorney resulted in unfair prejudice. He cites Holbrook v. State, 6 Md. App. 265, 250 A.2d 904, 906, in which we said, 'In short, the prosecutor should make no remark calculated to unfairly prejudice the jury against the defendant'. Appellant alleges that the State's cross-examination and arguments that the Appellant and his witnesses

> were 'political bosses, dishonest and unworthy of belief' was improper argument. We do not agree. The very purpose of cross-examination is to test the honesty and veracity of the statements made on direct examination. Although the State attempted to establish the witnesses were other than honest, we see no unfairness.
>
> As to the closing argument, the Appellant made no exceptions or objections below, and the matter is not before us for review under Maryland Rule 1085".

Maryland Rule 1085 deals with the scope of review by the Court of Special Appeals stating, in part, that the Court will not ordinarily decide any point or question which does not plainly appear by the record to have been tried and decided by the lower court. In effect the rule is discretionary. In the case of *Holt v. State*, 3 Md. App. 544, 240 A.2d 355 (1968), the court stated:

> "Holt's first contention is that he was denied due process of law due to a "violation of the sanctity of the jury and the jury room". There is nothing in the record to support the appellant's contention and the matter was not presented to or ruled upon by the trial judge; therefore, under Maryland Rule 1085 there is nothing before us to review. We will discuss the matter, however, in view of the fact that the issue may be raised in a collateral attack on the judgment".

In this case the Maryland Court of Special Appeals has applied the rule in such a way as to thwart unreasonably the assertion of a federal constitutional right.

The Supreme Court in the case of *Henry v. Mississippi*, 379 U.S. 443, 13 L. Ed. 2d 408, 85 S. Ct. 564, (1965),held:

> "***a litigant's procedural defaults in state proceedings do not prevent vindication of his federal rights unless the State's insistence on compliance with its procedural rule serves a legitimate state interest. In every case we must inquire whether the enforcement of a procedural forfeiture serves such a state interest. If it does not, the state procedural rule ought not be permitted to bar vindication of important federal rights". See: *Camp v. Arkansas*, 404 U.S. 69, 92 S. Ct. 307, 30 L. Ed. 2d 223 (1971).

Where the right asserted is based upon the federal constitution, this discretion, in the absence of extraordinary circumstances not appearing here, should have been exercised in favor of considering the asserted right on its merits.

This case thus raises an important issue as to the obligation of the State courts to decide, on their merits, federal issues that are fairly presented.

CONCLUSIONS

For the reasons above stated Petitioner prays that this Petition may be granted.

Respectfully submitted,

FRANCIS J. VALLE
RONALD L. SPAHN,
Attorneys for Petitioner.

APPENDIX

MANDATE
of Court of Appeals of Maryland
(Filed May 10, 1972)

TO THE HONORABLE THE JUDGES OF THE COURT OF SPECIAL APPEALS OF MARYLAND:

WHEREAS, the case of *Thomas Paul Raimondi v. State of Maryland*, came before you and wherein the judgment of the said Court of Special Appeals of Maryland was duly entered on the twenty-third day of June, 1971, as appears from the transcript of the record of the said Court of Special Appeals of Maryland which was brought into the Court of Appeals of Maryland by virtue of a writ of certiorari dated November 9, 1971; and

WHEREAS, in the September Term, 1971 the said cause came on to be heard before the Court of Appeals of Maryland;

ON CONSIDERATION WHEREOF, it was ordered and adjudged on April 4, 1972 by this Court that the judgment be affirmed, costs to be paid by the appellant;

NOW, THEREFORE, THIS CAUSE IS REMANDED to you in order that such proceedings may be had in the said cause in conformity with the judgment of this Court above stated as accord with right and justice, and the Constitution and laws of Maryland, the said writ notwithstanding.

WITNESS the Honorable Hall Hammond, Chief Judge of the Court of Appeals of Maryland this 9th day of May, 1972.

JAMES H. NORRIS,
Clerk/Court of Appeals
of Maryland

Note:

May 1, 1972: Motion for Reargument Filed.
May 8, 1972: Motion Denied.

OPINION
of Court of Appeals of Maryland,
265 Md. 229 (1972), 288 A.2d 882
(Filed April 4, 1972)

Raimondi, convicted at a jury trial in the Criminal Court of Baltimore of attempting to bribe a member of the General Assembly in contravention of Code (1957), 1967 Repl. Vol) Art. 27, §23, appealed to the Court of Special Appeals, which affirmed the judgment, *Raimondi v. State*, 12 Md. App. 322, 278 A.2d 664 (1971). We granted certiorari in order that we might consider whether the trial court erred when it permitted transcripts of electronic recordings to be taken into the jury room.

The transcripts were of four recorded conversations between Raimondi and State Senator John J. Bishop, Jr., of Baltimore County. One conversation took place in Senator Bishop's car and one in Raimondi's office. The other two were telephone conversations.

Although the recordings were intelligible, when played back on the same device which had recorded them they were at times nearly inaudible. For this reason the State had typewritten transcripts made of each recording. When the tapes were played back in the courtroom, each juror was given a copy of the transcripts in order to follow the recording more closely. At the end of the State's case, the transcripts were admitted in evidence and parts of them were

read to the jury and referred to during argument, in each instance over Raimondi's objection. At the conclusion of the case, the jury was permitted to take the transcripts to the jury room, again over Raimondi's objection.

It is not contended that the transcripts are inaccurate, or that the conversations which were recorded did not take place. Raimondi argues that the trial court erred in permitting the transcripts to go to the jury room because the action was not sanctioned by Maryland Rule 558 and because the jury's possession of the transcripts unduly emphasized their content, with consequent prejudice to the defendant.

Rule 757 makes Rule 558 applicable to criminal cases. Rule 558 provides, in part:

> "a. *In Court's Discretion.*
>
> Upon retiring for deliberation, the jury may take with them into the jury room such of the pleadings, granted prayers or written instructions, and *exhibits which have been received in evidence,* as the court may deem necessary for a proper consideration of the case. (Emphasis supplied)
>
> "b. *As of Right – Notes.*
>
> The jury may also take with them notes of the testimony or other proceedings taken by themselves but none taken by any other person.
>
> * * * * * * *
>
> "d. *Exception.*
>
> A deposition may not be taken into the jury room, except by agreement of all parties and with consent of the court."

Raimondi argues that the transcripts were either notes taken by another person, excluded by Rule 558 b or should be likened to a deposition, which could not be taken to the jury room under Rule 558 d without his consent. What these arguments overlook is that the transcripts were neither the notes of another nor depositions but exhibits, which Rule 558 a permits to be taken to the jury room, in the discretion of the trial judge.

Raimondi finds comfort in the broad-brush language found in two early cases, *Ingalls v. Crouch*, 35 Md. 296, 298 (1872) and *Moore v. McDonald*, 68 Md. 321, 333, 12 A. 117 (1888). The first held that permitting the jury to take into the jury room the plaintiffs' affidavit filed in support of their declaration was reversible error. In *Moore v. McDonald*, a caveat case, our predecessors noted that the original will under attack could be taken into the jury room only with the consent of the parties, and not as a matter of right.

Raimondi's argument that Rule 558 did little more than enunciate our prior case law is correct, but *Ingalls* and *Moore* must certainly be read in the light is correct, but *Ingalls* and *Moore* must certainly be read in the light of the later cases. *Bell v. State*, 200 Md. 223, 227-28, 88 A.2d 567 (1952) held that whether papers are to be given to the jury is a determination exclusively within the discretion of the trial court. *Cahill v. Baltimore*, 129 Mo. 17, 25-27, 98 A.235 (1916) held that in the absence of clear evidence of abuse of discretion, the action will not be reviewed on appeal. This was clearly the law immediately prior to the adoption of Rule 558 in 1957. Compare Comment, *Rule 558 – What the Jury May Take to the Jury Room*, 17 Md. L. Rev. 172 (1957) *with* 2 Poe, *Pleading and Practice*, §§ 328, 328A, at 299-300 (5th ed. 1925).

The apparently conflicting results reached by the courts of other states must be analyzed by comparing their statutes

or case law with Rule 558. *State v. Solomon*, 96 Utah 500, 87 P.2d 807 (1939); *Payne v. State*, 119 Wis. 615, 227 N.W. 258 (1929), and *State v. Wilson*, 188 Kan. 67, 360 P.2d 1092 (1961), on which Raimondi relies, all excluded transcripts of testimony or depositions or both from the jury room. The State relies on *People v. Feld*, 305 N.Y. 322, 113 N.E.2d 440 (1953) and *People v. Ketchel*, 30 Cal. Rptr. 538, 381 P.2d 394 (1963) which held that transcripts of recordings were admissible and on *People v. Beverly*, 233 Cal. App.2d 702, 43 Cal. Rptr. 743, *cert. denied*, 384 U.S. 1014, 86 S. Ct. 1937, 16 L.Ed.2d 1035 (1966) where, although principal reliance was placed on a stipulation by defense counsel,transcripts of recordings were permitted to go to the jury room, because they were exhibits. The jury was also permitted to have transcripts of recordings in *United States v. Koska*, 443 F.2d 1167 (2d Cir. 1971).

The case before us is a sibling of *Beverly* and *Koska*,. A tape recording is admissible in evidence, *McGuire v. State*, 200 Md. 601, 606, 92 A.2d 582 (1952), *cert. denied*, 344 U.S. 928, 73 S. Ct. 497, 97 L. Ed. 714 (1953); *Lynch v. State*, 2 Md. App. 546, 236 A.2d 45 (1967), *cert. denied*, 249 Md. 732 (1968), as is a typewritten transcript of the recording, *McGuire, supra; Tumminello v. State*, 10 Md. App. 612, 623, 272 A.2d 77 (1971). This would seem to be the majority view subject to the qualification that some courts are inclined to regard a recording of a confession or of inflammatory material as prejudicial to the defendant, if taken into the jury room, Annotations: *Permitting documents or tape recordings containing confessions of guilt or incriminating admissions to be taken into jury room in criminal case*, 37 A.L.R. 3d 238 (1971) and *Admissibility of sound recordings in evidence*, 58 A.L.R. 2d 1024, 1042 (1958).

Here we are not dealing with a confession, an admission, or material of an inflammatory character. If Raimondi could have shown that he was prejudiced, it might have been a different story. He conceded that the conversations had taken

place and that the recordings had been accurately transcribed. His only complaint seems to be that some of the conversations he had with Senator Bishop had not been taped. Raimondi was given ample opportunity to fill in these gaps when he testified. The jury had before it a question of fact, whether the conversations amounted to an attempted bribery, as the State contended, or were intended to conjure up a hoax, as Raimondi viewed it. The transcripts were relevant to this issue. That the jury may not have accepted Raimondi's explanation of what he thought was the true purpose of the conversations does not mean that the jury gave undue weight to the transcripts, to his prejudice.

JUDGMENT AFFIRMED, COSTS TO
BE PAID BY APPELLANT.

OPINION
of Court of Special Appeals of Maryland
12 Md. App.312, 278 A.2d 664
(Filed: June 23, 1971)

Thomas Paul Raimondi, the appellant, was convicted in a jury trial in the Criminal Court of Baltimore of attempted bribery, a violation of *Md. Code*, Art. 27, §23. Judge H. Kenneth Mackey, the presiding judge, imposed a sentence of eighteen months and a fine of $500. Appellant alleges error with respect to (1) the use of transcriptions of certain electronic recordings; (2) the instructions; (3) the prosecutor's cross-examination of the appellant's character witnesses; (4) the prosecutor's argument to the jury; and (5) failure to dismiss the indictment because of pre-trial publicity. We see no merit to any of the contentions.

This case grew out of the election in 1969 by the General Assembly of Maryland of a Governor to succeed Governor Spiro T. Agnew, who had resigned on January 15,1969 to

take the post of Vice-President of the United States on January 20, 1969.

There were one hundred eighty-five members of the General Assembly of Maryland entitled to vote on the governorship, forty-three in the Senate, and one hundred forty-two in the House of Delegates. Of these, eight in the Senate and twenty-five in the House of Delegates were Republicans; thirty-five in the Senate and one hundred seventeen in the House were Democrats. Ninety-three were required to elect.

The chief prosecution witness, State Senator John J. Bishop, Jr., from Baltimore County, testified that the appellant, Thomas Paul Raimondi, approached him, Bishop,by means of a telephone call at his home on November 27, 1968, and discussed the purchase of votes of the Republican members of the General Assembly for an unnamed candidate for the governorship. Mr. Bishop's testimony was that Mr. Raimondi at that time mentioned "3" per vote, which he assumed meant $3,000. per vote, for the thirty-three Republican votes, to be voted for an undisclosed candidate for Governor.

Mr. Raimondi's testimony was that Mr. Bishop had called him on November 2, 1968, ostensibly with reference to helping Raimondi clear up a campaign deficit, incurred in Mr. Raimondi's unsuccessful campaign as the Republican candidate for Congress in the Fourth Congressional District. Both Bishop and Raimondi agree that there was a discussion on this subject which had been initiated by Mr. Bishop and there is in evidence (Defendant's Exhibit 1) a copy of a letter dated November 7, 1968, wherein Mr. Raimondi informs Mr. Bishop of the amount of the deficit and Exhibit 1A, a list of unpaid bills. Mr. Raimondi testified that when Mr. Bishop called him he said something to the effect that "I hear they are trying to buy votes", speaking of the gubernatorial election, which had come into the conversation. According to

Raimondi, he, Raimondi, said he had not heard anything about this, but asked whether Bishop was interested, and Bishop's reply was "I might be."

When Raimondi was the Republican candidate for Congress from the Fourth Congressional District, which included part of Baltimore County, Bishop had some control over the expenditure of funds and had refused to help Raimondi. Feeling ill-used, Raimondi conceived this situation as a means of getting back at Bishop, and, as he put it in his testimony, it back-fired. He said that the candidate for Governor, the money and the proposed bribe were all mythical figments of Mr. Raimondi's imagination, and that he had called Bishop back and strung him along to see how far he would go.

Although Mr. Bishop made several efforts to have money passed between the defendant and him, no money ever changed hands nor did the defendant ever say that he actually had all or any of the money,nor was there any showing that he was in a position to get it if the deal progressed beyond the talking stage.

Mr. Bishop's daughter, Suzanne Bishop, testified that in November, 1968, when her father was in Annapolis, Maryland, she had received a telephone call from someonw who identified himself as being Tom Raimondi, and that this person had given her two telephone numbers at which he could be reached. One was the office telephone number of one William Adelson, Plaza 2-6682, the other was 323-2255. The latter was not an active telephone number at the time of the alleged call, but Mr. Raimondi's office telephone number at the time was 727-2255, the last four digits corresponding with the last four digits of one of the number which Miss Bishop said she was given. The first three digits correspond with Mr. Raimondi's home telephone number, 323-7222.

Miss Bishop admitted that she did not know Mr. Raimondi before or since this alleged conversation and

identified the caller as Mr. Raimondi only because the caller said that was his name. Appellant denied making this telephone call. He and his wife both testified that on the date and hour of this alleged telephone call they were in Washington, D.C. having dinner.

Mr. Bishop said that on receiving Mr. Raimondi's telephone call early in the morning of November 27, 1968, he thought it over for a minute or so and decided to call Colonel Robert Lally, Superintendent of the Maryland State Police, and arranged to meet him at the Pikesville Headquarters of the State Police. After talking with Mr. Lally, Mr. Bishop telephoned Mr. Raimondi from there but Raimondi was not in his office. He finally reached Mr. Raimondi on his third call, which was between 1:00 and 2:00 P.M. His testimony was:

"Q. What was the discussion you had on the phone at that time?

"A. Well, Colonel Lally had told me I should have a face-to-face contact with him, so I told him – I said 'I don't want to talk on the telephone about the thing you called me about this morning. I have had some interest expressed in it by others, and I would like to talk to you further about it.'

"Q. When you said you had some interest expressed in it by others, who did you have in mind when you said others?

"A. Colonel Lally."

He told Raimondi to wait in his office for his, Bishop's call, and called him at 2:00 P.M. and arranged to meet him at 3:30 P.M. He picked Raimondi up at Charles and Saratoga Streets and rode around with him for about fifteen minutes discussing the proposition, including a statement by Raimondi

that he people wanted a minimum of twenty-five votes and would pay $3,000 per vote, up to a maximum of $75,000.

Mr. Bishop testified that he received another telephone call from Mr. Raimondi on December 2, 1968 at home. On December 3,1968, at 11:00 A.M. Mr. Bishop met with Mr. Moylan, State's Attorney of Baltimore City, Mr. Helinski, his deputy, and Colonel Lally in Mr. Moylan's office. Mr. Bishop had called Mr. Raimondi earlier that morning at his home, having been instructed to be sure to do so. Mr. Bishop told Mr. Raimondi that he was trying to get some information and that he would be in touch with him later that date, which he did later that afternoon.

At the meeting in Mr. Moylan's office Mr. Bishop was instructed to make further contacts with Mr. Raimondi, which he did. At Mr. Moylan's suggestion, arrangements were made to use electronic equipment to record the conversations between Mr. Bishop and Mr. Raimondi, A Concord tape recorder was brought into Mr. Moylan's office and Mr. Bishop was instructed in its use. An appropriate warrant was obtained.

Four electronic recordings of conversations between Mr. Raimondi and Mr. Bishop were played back to the jury. The jury was given transcripts of these recordings and were permitted to refer to them during the playing of the recordings, during argument of counsel, and they were also given the transcripts to take into the jury room, all over the objection of the defendant. These electronic recordings took place on the following dates:

December 4, 1968, while Mr. Bishop and Mr. Raimondi were riding in Mr. Bishop's car in Baltimore City.

December 10, 1968, around 7:00 P.M. during a visit by Mr. Bishop to Mr. Raimondi's office in downtown Baltimore.

December 12, 1968, telephone conversation between Mr. Bishop and Mr. Raimondi.

December 16, 1968, telephone conversation between Mr. Bishop and Mr. Raimondi.

Mr. Bishop brought into their conversation the name of Mr. Dale Anderson, County Executive for Baltimore County, as being Raimondi's candidate, and, as Mr. Raimondi put it, he agreed with everything Bishop said. Raimondi also brought in the name of M. William Adelson, with whom he had once been associated in the practice of law as being one of those interested in the deal. Mr. Adelson and Mr. Anderson both indignantly denied having had anything to do with such a scheme, and the record is completely devoid of any evidence that they did, or that they had any knowledge of it, other than Mr. Bishop's recitations of what Raimondi had told him. Mr. Raimondi testified that there was no real scheme to buy votes and that he had no connection with either Mr. Adelson or Mr. Anderson.

After Mr. Bishop had met with Colonel Lally, he, either on his own account, or on instructions to get Mr. Raimondi to incriminate himself, called Mr. Raimondi several times to make appointments so that the conversations could be electronically recorded. Mr. Raimondi testified that he was trying to put the "charade" to an end but did not succeed in doing so until Mr. Bishop, Mr. Moylan and Mr. Helinski felt that they had enough evidence for prosecution of Mr. Raimondi.

I. Transcriptions of Electronic Recordings

Raimondi alleges the trial court erred:

(a) In permitting the transcripts to be given to the jury while the recordings were being played back to the jury.

(b) In permitting the transcripts to be introduced into evidence.

(c) In permitting the jury to have the transcripts during argument of counsel at the end of the case.

(d) In permitting the jury to take the transcripts into the jury room and having them during their deliberations upon their verdict.

To support his argument, Raimondi cites *Duggan v. Florida*, 189 So.2d 890, *Basham v. Oklahoma*, 340 P.2d 461 and *Bonicelli v. State*, 339 P.2d 1063 (Okla.) the latter pertaining to tape recordings of confessions; he also cites a number of cases pertaining to what evidence the jury can take into the jury room. Since the errors, if any, were harmless, it will be unnecessary for us to discuss the authorities cited. We do, however, call attention to the cases cited in 58 A.L.R.2d 1024 at 1042 as well as three Maryland cases which have some bearing on the points raised. *McGuire v. State*, 200 Md. 601, 92 A.2d 582, *Lynch v. State*, 2 Md. App. 546, 236 A.2d 45, and *Tumminello v. State*, 10 Md. App. 612, 272 A.2d 77.

It is specifically conceded on appeal and below that the transcriptions were accurate renditions of the words as occurred on the tapes. Although in his testimony Raimondi asserted some minor discrepancies in the tapes themselves, he admitted the substance of the conversations stating "all the conversations on these tapes, and I don't know how to make anybody understand this, is a figmentation [sic] of my imagination." He said this to support his assertion that he was attempting to "string along" Senator Bishop.

The crucial issue for determination by the jury was, therefore, whether Mr. Raimondi was perpetrating a hoax on Senator Bishop or was making an actual attempt to purchase his and others' votes in the General Assembly.

Since the issue in point involves not the occurrence of the conversations, nor the substantial accuracy of the tapes, nor the accuracy of the transcripts, but only the proper conclusion to be drawn, this Court does not see how either conclusion, hoax or bribe, is encouraged by the transcriptions. Specifically, we do not see how transcripts of the recordings in any manner harmed Raimondi's assertion he was playing a practical joke on Bishop."

II Instructions

A

The court instructed the jury in part as follows:

"Bribery has been defined as the voluntary giving or offering to any public official any sum of money to influence him in the performance of any official duties required of him. The essence of the crime of bribery is the passing of money to him in order to so influence him. It is essential that the gift or the offering be made with the corrupt intent to so influence him. Now, this is bribery I have just described. In this case the defendant is not charged with bribery, but attempting to bribe. I gave you the definition of bribery so we can more intelligently discuss the alleged crime of attempting to bribe. An attempt is an unsuccessful offer of a bribe or the commission of an act falling short of an offer. An attempt, generally speaking, has been said to be something which amounts to more than the preparation but falls short of actually [sic] consummation of the crime of bribery in this case. The actual tender of a bribe is not necessary to make up the offense. That is, the actual passing of the money is not necessary, or the attempt to pass money is not necessary to make up the offense. Any expression of the ability to produce the amount

offered is sufficient to constitute the crime of attempted bribery."

Raimondi duly excepted to that part of the charge which said an attempt is an "unsuccessful offer of a bribe or the commission of an act falling short of an offer" maintaining that under the indictment it was necessary for the State to prove the attempt to bribe by offering. Although confusing an offer with a tender, on appeal he expressly concedes that an expression of the willingness and ability to produce money could amount to an offer. The objection appears to have some merit only because it takes the sentence out of context. The fact that certain parts of the instructions, taken out of context, might give an inaccurate statement of the law does not make the instructions wrong provided the instructions taken as a whole accurately state the law. *Shotkosky v. State*, 8 Md. App.492, 261 A.2d 171, *Graef v. State*, 1 Md. App. 161, 228 A.2d 480, and *Roberts v. State*, 4 Md. App. 209, 241 A.2d 903.

In the instant case, the trial judge explained that an attempt amounted to more than preparation but must fall short of consummation, and further that tender was not necessary since any expression of ability to produce the amount offered is sufficient to constitute the crime of attempted bribery. While we cannot endorse the instruction as a model one, we do not see any prejudice to the appellant's position; we think the overall instruction correctly explained the law to the jury. See *Cunningham v. State*, 190 Md. 578, 59 A.2d 337, *Md. Code*, Art. 27,§ 23, and Perkins *Criminal Law*, Chapt. 5, §3 (C) 3 page 403.

B

Although the appellant in arguing the preceding objection stated, "The Court correctly explained to the jury that in order to constitute an offer there need not be an actual tender of money", he contends that the court committed error in refusing the following instruction:

"That in order to find the defendant guilty of the crime with which he is charged, it is not sufficient for the State to show that there was a discussion of money to be paid, but there must be evidence of an actual attempt of the defendant to pay money to John J. Bishop, Jr."

He cites *United States v. Closterman*, 248 F.2d 191 (3d Cir., 1957), which concerns solely the question of entrapment; there is no contention concerning entrapment in the instant case. *Klosterman* provides no assistance in the present case as to what is necessary to constitute an attempt to bribe. We are aware of no authority that would support the instruction requested.

III. Cross-Examination of Character Witnesses

Raimondi contends that the trial court erred in permitting the prosecuting attorney in cross examining his character witnesses, more properly called a reputation witness's testimony, to ask them whether they had heard that in a 1963 case in which the appellant appeared as a witness, a particular federal court judge in Maryland stated Raimondi's testimony was utterly incredible, false, and the judge rejected it in its entirety. Appellant seems to concede that the question is within the scope of cross-examination questions of a character witness's testimony permitted under *Comi v. State*, 202 Md. 472, 97 A.2d 129 wherein the Court allowed questions of such witnesses as to whether or not they had heard of the defendant's arrest, even though the arrest did not result in conviction. He contends that such questions must be carefully limited by the trial judge. He also questions the good faith of the State's Attorney, alleging that the absolute precision in the references to the date and the number of the federal opinion showed an intent to indirectly fix the appellant's alleged false testimony in 1963 as a matter of fact in the minds of the jury. Also he argues the prosecutor did not attempt to establish whether or not the particular rumor

or report would have probably reached the ears of the witnesses, all of whom denied having heard of the opinion.

Raimondi cites no case law to support his argument. The whole thrust of the cases indicate that the good faith requirement is met if the State satisfies the trial judge that the particular fact or rumor assumed in the question is supported by substantial evidence. The cases are collected in 47 A.L.R.2d 1258 at 1314 and in the *Later Case Service* to that annotation. In the instant case, the State satisfied the trial judge by producing the copy of the opinion in which the judge had made the statement attributed to him and there is no doubt that the federal judge did, in fact, say what was attributed to him.

Raimondi supports his argument that such questions should be severely limited by quoting from 3A Wigmore *Evidence*, §988 at 920 (Chadbourn Rev. 1970) as follows:

> "But the serious objection to them is that practically the above distinction – between rumors of such conduct, as affecting reputation, and the fact of it as violating the rule against particular facts – cannot be maintained in the mind of the jury. The rumor of the misconduct, when admitted, goes far, in spite of all theory and of the judge's charge, towards fixing the misconduct as a fact upon the other person, and thus does three improper things – (1) it violates the fundamental rule of fairness . . . that prohibits the use of such facts, (2) it gets at them by hearsay only, and not by trustworthy testimony, and (3) it leaves the other person no means of defending himself by denial or explanation, such as he would otherwise have had if the rule had allowed that conduct to be made the subject of an issue. Moreover, these are not occurrenses of possibility, but of daily practice. This method of inquiry or cross-examination is frequently resorted to by counsel

for the very purpose of injuring by indirection a character which they are forbidden directly to attack in that way; they rely upon the mere putting of the question (not caring that it is answered negatively) to convey their covert insinuation. The value of the inquiry for testing purposes is often so small and the opportunities of its abuse by underhand ways are so great that the practice may amount to little more than a mere subterfuge, and should be strictly supervised by forbidding it to counsel who do not use it in good faith."

Although we think *Comi v. State, supra,* disposes of the issue in Maryland, we point to *Michelson v. United States,* 335 U.S. 469, 69 S. Ct. 213, 93 L. Ed. 168 for an excellent discussion of the problem.

The Court said in part:

"Thus the law extends helpful but illogical options to a defendant. Experience taught a necessity that they be counterweighted with equally illogical conditions to keep the advantage from becoming an unfair and unreasonable one. The price a defendant must pay for attempting to prove his good name is to throw open the entire subject which the law has kept closed for his benefit and to make himself vulnerable where the law otherwise shields him. The prosecution may pursue the inquiry with contradictory witnesses to show that damaging rumors, whether or not well-grounded, were afloat – for it is not the man that he is, but the name that he has which is put in issue. Another hazard is that his own witness is subject to cross-examination as to the contents and extent of the hearsay on which he bases his conclusions, and he may be required to disclose rumors and reports that are current even if they do not affect his own conclusion. It may test the

sufficiency of his knowledge by asking what stories were circulating concerning events, such as one's arrest, about which people normally comment and speculate. Thus, while the law gives defendant the option to show as a fact that his reputation reflects a life and habit incompatible with commission of the offense charged, it subjects his proof to tests of credibility designed to prevent him from profiting by a mere parade of partisans." 335 U.S. at 478-479.

* * * * * * *

"The trial judge was scrupulous to so guard it in the case before us. He took pains to ascertain, out of presence of the jury, that the target of the question was an actual event, which would probably result in some comment among acquaintances if not injury to defendant's reputation. He satisfied himself that counsel was not merely taking a random shot at a reputation imprudently exposed or asking a groundless question to waft an unwarranted innuendo into the jury box." 335 U.S. at 481.

* * * * * * *

"The inquiry as to an arrest is permissible also because the prosecution has a right to test the qualifications of the witness to bespeak the community opinion. If one never heard the speculations and rumors in which even one's friends indulge upon his arrest, the jury may doubt whether he is capable of giving any very reliable conclusions as to his reputation." 335 U.S. at 483.

* * * * * * *

"A defendant in such a case is powerless to prevent his cause from being irretrievably obscured and

> confused; but, in cases such as the one before us,the law foreclosed this whole confounding line of inquiry, unless defendant thought the net advantage from opening it up would be with him. Given this option, we think defendants in general and this defendant in particular have no valid complaint at the latitude which existing law allows to the prosecution to meet by cross-examination an issue voluntarily tendered by the defense." 335 U.S. at 485.

In the instant case, defendant tendered his reputation to the jury and thus condoned the introduction against him of damaging evidence that otherwise would not be admissible. By requiring the State to show conclusive evidence of the federal judge's statement regarding Raimondi's testimony, the trial judge here took scrupulous pains to ascertain that the target of the question was an actual event and not a random shot. We do not think Raimondi can complain because the jury tested the qualifications of his friends to give a reliable conclusion as to his reputation and found the qualifications weak because the friends had not heard of the statement by the federal judge. Defendant having tendered the reputation issue, nothing would have precluded the State from offering in evidence before the jury a certified copy of the opinion of the federal judge under *Michelson v. United States, supra.* Raimondi's complaint concerning the detail of the question is drained of validity since the record conclusively established the truthfulness of the fact assumed therein, i.e., that the federal judge actually said what the question indicated he had said.

IV Prosecutor's Argument

Appellant contends the cross-examination and argument of the State's Attorney resulted in unfair prejudice. He cites *Holbook v. State,* 6 Md. App. 265, 250 A.2d 904, 906, in which we said, "In short, the prosecutor should make no remark 'calculated to unfairly prejudice the jury against the

defendant' ". Appellant alleges that the State's cross-examination and arguments that the appellant and his witnesses were "political bosses, dishonest and unworthy of belief" was improper argument. We do not agree. The very purpose of cross-examination is to test the honesty and veracity of the statements made on direct examination. Although the State attempted to establish the witnesses were other than honest, we see no unfairness.

As to the closing argument, the appellant made no exceptions or objections below, and the matter is not before us for review under Md. Rule 1085.

V. Pre-trial Publicity

On December 19, 1968, the indictment of the grand jury of Baltimore City was returned against appellant. On the same day, the State's Attorney for Baltimore City issued the following statement:

"FOR IMMEDIATE RELEASE

"STATEMENT OF CHARLES E. MOYLAN, JR., BALTIMORE STATE'S ATRORNEY

"Thursday, December, 19, 1968, 2:00 P.M.

"The Baltimore Grand Jury this morning returned a one-count indictment against local attorney Thomas Paul Raimondi. The indictment charges that during the time period of November 27, 1968, through December 18, 1968, Mr. Raimondi did attempt to bribe State Senator John J. Bishop, Jr. of the Fourth Legislative District of Baltimore County. Mr. Raimondi, acting for himself and ostensibly for others, according to the charge, did offer Senator Bishop the sum of between $75,000 and $100,000. For that sum, Senator Bishop was to deliver the

votes, including his own, of not less than twenty-five and up to all thirty-three of the Republican members of the General Assembly of Maryland in the forthcoming balloting in that General Assembly to select a gubernatorial successor to Vice-President-elect Spiro T. Agnew. Those votes were to be cast for a candidate to be named by Mr. Raimondi or by those for whom he was allegedly acting.

"The investigation that led to today's indictment has been in progress for three weeks. Only six persons have been aware that the investigation has been going on – Senator Bishop himself; Colonel Robert J. Lally, Superintendent of the Maryland State Police; Governor Agnew; Judge J. Gilbert Prendergast of the Supreme Bench of Baltimore City; myself as State's Attorney; and Deputy State's Attorney George J. Helinski.

"Senator Bishop was initially approached by telephone on November 27. He immediately communicated the bribe offer to Colonel Lally and to Governor Agnew. Senator Bishop then contacted the State's Attorney's Office of Baltimore City. Acting on the instructions of Colonel Lally, Mr. Helinski, and myself, Senator Bishop pretended to go along with the scheme. A number of conferences between Senator Bishop and Mr. Raimondi were held throughout the ensuing three weeks, in automobiles, in a law office, and by telephone. On court orders applied for by myself and authorized by Judge Prendergast, most of those conversations were electronically recorded.

"All of this information was communicated in my office earlier this afternoon to the following legislative leaders: President of the Maryland Senate William S. James, Senate Majority Leader Harry R.

Hughes, Senate Minority Leader Edward T. Hall, Speaker of the House of Delegates Marvin Mandel, House Majority Leader Thomas Hunter Lowe, and House Minority Leader John S. McInerney.

"Mr. Raimondi has been released on his own recognzance. His arraignment is scheduled for 10:00 A.M. tomorrow morning in Part I of the Criminal Court before Judge Charles D. Harris. In the interest of maintaining public confidence in our legislative process and of removing any taint of suspicion from many innocent persons, this office will ask Judge Harris to schedule this case for trial as expeditiously as possible, compatibly with the interests of justice."

The media generally reported the substance of the press release.

On appeal, appellant contends the trial court erred in refusing to dismiss the indictment against him because of the pre-trial publicity generated by the State's Attorney. This contention was raised in a pre-trial appeal, *Raimondi v. State*, 8 Md. App. 468, 261 A.2d 40, which was dismissed as premature.

Initially, it is important to accurately view the scope of the relief requested. Neither now nor in the earlier proceedings does appellant request the relocation of his trial, although he might have been granted a change of venue. Neither now nor in his earlier proceedings does appellant request a delay of his trial, although he might have been granted a continuance. Thus, he asks for no less a remedy than no trial at all, which is clearly an extreme and unjustified remedy. This Court is aware of no appellate precedent which would require that an accused be allowed to go completely free with no trial due to pre-trial publicity.

Unlike *Sheppard v. Maxwell*, 384 U.S. 333, 86 S. Ct. 1507, 16 L.Ed.2d 600, or *Estes v. Texas*, 381 U.S. 532, 85 S. Ct. 1628, 14 L. Ed.2d 543, we do not here see inherent prejudice from publicity which saturated the community. Although appellant claims that it will be impossible for him to have a fair trial "in the foreseeable future", we will not so readily assume that an unbiased trier of fact cannot be found, *Grammer v. State*, 203 Md. 200, 100 A.2d 257, *cert. den.* 347 U.S. 938, 74 S. Ct. 634; 98 L. Ed. 1088, especially since as a practical matter trials cannot be held in a vacuum hermetically sealed against rumor or report. It also appears that appellant held his own conversations with the press and thus possibly himself generated some of the publicity. In making this analysis, we do not condone a State's Attorney publicly revealing evidence to support an indictment; we affirm for the reasons hereinafter stated.

The trial in this case was only after a lengthy hiatus between the indictment and the trial. The hiatus was 16 months as opposed to significantly shorter periods in *James v. State*, 193 Md. 31, 65 A.2d 888 (arraigned July 13, 1948, tried September 20, 1948, *Baltimore Radio Show v. State*, 193 Md. 300, 67 A.2d 497) or *Grammer v. State, supra*, (arraigned September 16, 1952, tried October 14, 1952.) After the election by the General Assembly of a new Governor on January 7, 1969 (appellant was tried on April 20, 1970, the publicity almost completely ceased. There was a lengthy voir dire. Thirteen of the prospective jurors admitted having been aware of the publicity. All stated it would in no way affect their verdict. Three of the thirteen were permitted to serve on the panel. We note that the defense used only seventeen of the twenty regular peremptory challenges permitted by Md. Rule 746, and only three of the four challenges permitted under Md. Rule 748 in the selection of two alternate jurors. Thus, the only three jurors who admitted knowledge of the publicity could have been removed from the panel had Raimondi so desired. We see no prejudice.

JUDGMENT AFFIRMED. APPELLANT TO PAY THE COST.

OPINION
of Court of Special Appeals of Maryland
8 Md. App. 168, 261 A.2d 40

(Filed: January 23, 1970)

The appellant Raimondi was indicted on December 19, 1968 and charged with attempted bribery of a member of the Senate of Maryland. On February 6, 1969 appellant filed a motion to dismiss the indictment alleging therein that his case had received such widespread publicity due to certain statements made by the State's Attorney of Baltimore City to the news media that he could not obtain a fair trial anywhere in the State of Maryland "in the forseeable future."

An evidentiary hearing was conducted on the motion to dismiss on June 23, 1969 and July 2, 1969. On September 26, 1969, the motion was denied, the court concluding, after setting forth a detailed statement of its factual findings, that the appellant Raimondi could presently receive a fair trial in the State of Maryland. From this determination, the appellant filed his order for appeal to this court on October 6, 1969. The State moved to dismiss the appeal under Maryland Rule 1035 on the ground that we were without jurisdiction to hear the appeal as it was taken from a pretrial interlocutory order – not a final judgment – and henceforth was not immediately appealable.

Under Maryland Code, Article 5, Section 12, "a defendant in a criminal action [with exceptions not here pertinent] may appeal to the Court of Special Appeals from any conviction where the sentence is other than death *** ." Under Maryland Rule 1035, the Court of Special Appeals is directed "not [to] entertain or consider an appeal taken from a *pro forma* order or judgment," and is required by the Rule to dismiss such appeals "as prematurely taken." The cases have long recognized the principle that an appeal in a criminal

case is premature until after final judgment, *viz.*, that appeals from interlocutory orders of the trial court in criminal cases are not allowed. *See Pearlman v. State*, 226 Md. 67; *Eggleston v. State*, 209 Md. 504; *State v. Harman*, 199 Md. 209; *State v. Haas*, 188 Md. 63; *State v. Mather*, 7 Md. App. 549; *Harris v. State*, 6 Md. App. 7; *Greathouse v. State*, 5 Md. App. 675. In *Lee v. State*, 161 Md. 430, decided in 1931, the Court of Appeals held that "its jurisdiction is limited to the reviewing of final actions of the trial court"; accordingly, it declined to "take up cases from the trial courts piecemeal." Were it otherwise, the *Lee* court said, "then proceedings in every criminal case, great or small, may be stopped and delayed while the accused prosecutes on appeal ***" on matters preliminary to trial on the merits of the case. And this, continued the court in *Lee*, "would add just so much to the resources of those who might find vexatious delays advantageous, and would multiply appeals in criminal cases, often when acquittals, in the end, would render them profitless." The precise holding in *Lee* was that the selection of the forum to which a capital case had been removed was within the lower court's discretion and was not a final order immediately reviewable on appeal. Conversely, the court recognized that had there been a refusal to grant the accused his absolute Maryland constitutional right in a capital case to such removal, such a determination would have amounted to a final judgment on the constitutional right and as such would have been immediately open to review on appeal. *Lee* concluded, on authority of *Tidewater Portland Cement Co. v. State*, 122 Md. 96, that "only decisions on claims of such absolute constitutional rights have been held reviewable at once," and that "orders within the discretion of the lower courts [such as whether to remove a non-capital case] are, on the contrary, not final orders within the meaning of the rules governing the jurisdiction of this court, and are therefore not immediately reviewable, if reviewable at all."

In *Pearlman v. State, supra*, at page 71, the Court of Appeals stated the rule in these terms:

> "There has been applied through the years a corollary to the rule that there can be no appeal except from a final judgment. Action of a trial court which denies an absolute constitutional right, although seemingly interlocutory, will be reviewed by this Court without requiring the complainant to proceed to final judgment and then seek review of the challenged action on appeal from that judgment. The corollary is subject to the qualification that even though a constitutional right is involved, action of the lower court rightfully exercising discretion as to the functioning of the right will not be so reviewed."

The court held in *Pearlman* that a ruling by the lower court recognizing that the defendant was indigent but nevertheless denying him the right to pursue a motion for a new trial as an indigent constituted a final judgment on a constitutional right, from which an immediate appeal would lie, since it terminated the right of the indigent accused to further litigate his case.

We think it clear that *Lee* and *Pearlman* share this common thread: that in a criminal proceeding, where the lower court, prior to trial, recognizes the applicability of a particular constitutional right, but nevertheless refused to apply it in the accused's case, then such action constitutes a final judgment since it involves the non-discretionary refusal of the court to grant the accused on absolute constitutional right; but it is otherwise where the lower court makes a determination, based on the facts and circumstances of the case, that the constitutional right is not applicable to the accused's case, for in that event, as stated by the court in *Pearlman*, "even though a constitutional right is involved,

action of the lower court rightfully exercising discretion as to the functioning of the right will not be so reviewed."[1]

By way of apparent exception to its rulings in *Lee* and *Pearlman*, the Court of Appeals has consistently held that an immediate appeal will lie, prior to a trial on the merits of the case, from a refusal to grant a motion asserting a denial of the constitutional right to a speedy trial. *See Jones v. State*, 241 Md. 599; *Harris v. State*, 194 Md. 288. The court's reasoning appears based, in part at least, on the thought expressed in *Harris* at page 294 that should the accused prevail on his motion he would thereby "become entitled to be freed of further proceedings" in the case. On the authority of these cases, we have recognized in countless cases the right of accused persons to file an immediate appeal in such cases – most have been patently frivolous, *see Westmoreland v. State*, Md. App. 261 A.2d 35, September Term, 1969 (filed Jan. 23, 1970); some have not been frivolous, see *Wilson v. State*, Md. App. 259 A.2d 553, September Term, 1969 (filed December 10, 1969).[2] And consistent with the apparent rationale underlying the right to take an immediate appeal on the ground of alleged violation of the constitutional right to a speedy trial, we held in *Brown v. State*, 2 Md. App. 388, that an immediate appeal would lie, prior to trial on the merits, from the denial of a motion asserting a violation of the constitutional right not to be twice placed in jeopardy for the same offense. But whether a person has been denied a speedy trial or is being placed in double jeopardy will usually turn on the facts and circumstances present in the particular case; and, at least with the exception of those cases where the trial

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1. In *Smith v. Whisman v. State*, 2 Md. App. 72, we recognized that in capital cases the refusal to grant a removal at any time before the jury panel is completed amounts to a final judgment on a constitutional right and is immediately reviewable. The right is absolute, and no discretion "as to the functioning of the right" is ever involved.

2. There is no such right to an immediate appeal where the lower court defers its ruling on the motion until the conclusion of the trial on the merits. *See Harris v. State*, 6 Md. App. 7.

judge concludes that the right exists and is applicable but nevertheless refused to apply it, the determination of the question by the lower court would always seem to involve an application of judicial discretion "as to the functioning of the right" squarely within the rules enunciated in *Pearlman* and *Lee* prohibiting immediate appeals from interlocutory orders.

Whether a real distinction exists between the rationale underlying *Lee* and *Pearlman*, on the one hand, and *Harris*, *Jones* and *Brown*, on the other, makes little difference in appellant's case, since under none of these cases would he have a right to an immediate appeal from the denial of his pretrial motion to dismiss the indictment. As heretofore indicated, appellant's motion asserted that, because of the adverse pretrial publicity, he could not receive a fair trial in the State of Maryland "in the foreseeable future." He contends now that, as a result of such publicity, he has been denied his state and federal constitutional right to be tried by a jury in Baltimore City – the jurisdiction where the alleged crime occurred and in which he was born and reared. He alleges that he will be forced, against his will, and in violation of his constitutional rights, to remove the case from Baltimore City, and that even though removed, he cannot receive a fair trial anywhere in the State because the adverse publicity "covered the State from the mountains of Western Maryland to the shores of the Atlantic Ocean." Even if these allegations were true, appellant would not thereby become forever entitled to be freed of the proceedings against him; his remedy would not be a dismissal of the indictment, but rather, at most, a right to delay the trial until such time as the effect of the publicity was no longer prejudicial. It appears equally clear that the issue before the trial judge was one calling for the exercise of judicial discretion– a finding by him, based on the evidence adduced at the hearing – as to the merits of appellant's motion. In concluding from the evidence that the appellant could presently receive a fair trial

in Maryland, including Baltimore City, the trial judge "rightfully" – indeed necessarily – exercised his discretion under *Pearlman* "as to the functioning of the [constitutional] right." The issue before us is not whether in so ruling the trial judge abused his discretion and committed prejudicial error; rather, it is whether an immediate appeal lies from that interlocutory order, and, as indicated, we hold that it does not. Upon similar reasoning, we have concluded that there is no right to file an immediate appeal from a denial of a pretrial motion to suppress evidence allegedly seized in contravention of the Fourth Amendment to the federal constitution, *Harris v. State*, 6 Md. App. 7, and *Pearce v. State*, Md. App. 261 A.2d 39, September Term, 1969 (filed Jan. 23, 1970); from an order overruling the defendant's constitutionally grounded exceptions to the State's answer to his motion for discovery and inspection, *Dodson v. State*, Md. App. 261 A.2d 38, September Term, 1969 (filed Jan. 23, 1970); from the granting of the State's motion in a non-capital case for a change of venue, *Davis v. State*, Md. App. 261 A.2d 37, September Term, 1969 (filed Jan. 23, 1970); from refusal to grant a motion to dismiss an indictment on the ground that the State's witnesses had made pretrial identifications of the accused in contravention of the principles enunciated in *United States v. Wade*, 388 U.S. 218, *Gilbert v. California*, 388 U.S. 263, and *Stovall v. Denno*, 388 U.S. 293, *see Powers v. State*, Md. App. 261 A.2d 44, September Term, 1969 (filed Jan. 23, 1970); or from refusal to grant a motion to dismiss indictments on the ground that they were technically defective, *Greathouse v. State, supra. See also Kardy v. Shook*, 237 Md. 524, holding that an order of the trial court permitting the taking of a pretrial deposition is interlocutory in nature and not immediately appealable.

The further question presenting itself is whether the lower court is divested of jurisdiction to proceed with the trial of the case upon the filing of an order for appeal from a non-appealable, interlocutory pretrial order. The Court of

Appeals has held that the perfecting of an appeal brings the subject matter thereof within the exclusive jurisdiction of the appellate court and suspends the authority of the lower court over it during the pendency of the appeal; that the lower court lacks jurisdiction to take any further action in the case wih respect to the subject matter of the appeal until the receipt of the mandate of the appellate court, after the appeal has been heard and decided. *See Vancherie v. Siperly,* 243 Md. 366; *State v. Jacobs,* 242 Md. 538; *Bullock v. Director,* 231 Md. 629.[3] Thus, in *Westmoreland v. State,* supra, *we held that the trial court had no jurisdiction to try the accused*

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[3] In *Bullock,* the court said at page 633:

"An appeal to this Court from a *nisi prius* court does not necessarily stay all further proceedings in the trial court, nor does it strip said court of all power over the proceeding in which the appeal has been taken. The trial court may act with reference to matters not relating to the subject matter of, or affecting, the proceeding; make such orders and decrees as may be necessary for the protection and preservation of the subject matter of the appeal; and it may do anything that may be necessary for the presentation of the case in this Court, or in furtherance of the appeal. But, when an appeal is taken, it does affect the operation or execution of the order, judgment of decree from which the appeal is taken, and any matters embraced therein. After the appeal has been perfected, this Court is vested with the exclusive power and jurisdiction over the subject matter of the proceedings, and the authority and control of the lower court with reference thereto are suspended."

after he filed an appeal from the court's pretrial refusal to grant his motion to dismiss the indictment for violation of his asserted constitutional right to a speedy trial. But we find nothing in these cases requiring us to hold that the lower court automatically loses jurisdiction to proceed with the trial of an accused simply upon the filing of an appeal from a pretrial ruling of the court which, under the cases, is recognized as an interlocutory order, not immediately reviewable on appeal as constituting a final judgment denying a constitutional right. *See Powers v. State, supra,* holding that the trial court was not divested of jurisdiction to try the accused when he appealed from the court's denial of his motion to dismiss the indictment because of alleged violations of his constitutional rights under the *Wade-Gilbert-Stovall* trilogy of cases. To hold otherwise would be to sanction that which the court in *Lee v. State, supra,* deemed so distinctly odious – the stopping of criminal trials by filing appeals from interlocutory orders. If the accused in a criminal case could deprive the trial judge of jurisdiction to try and determine his case by taking an appeal from a non-appealable interlocutory order, then he would be vested with the power to "paralyze the administration of justice in the [courts] by the simple expedient of doing what the law does not allow him to do, *i.e.*, taking an appeal from an order which is not appealable." *See Veazey v. City of Durham,* 57 S.E. 2d 377, 383 (N.C.). We hold then that in such circumstances the lower court is not, by reason of the filing of an appeal, divested of jurisdiction and need not stay further proceedings in the case.

APPEAL DISMISSED; COSTS TO BE PAID BY APPELLANT; THE MANDATE OF THIS COURT TO ISSUE FORTHWITH.

MEMORANDUM OPINION DENYING MOTION TO DISMISS INDICTMENT
Criminal Court of Baltimore, unreported

HARRIS, J.:

On December 19th, 1968, the Grand Jury of Baltimore City returned an indictment in the above case, charing that the defendant, Thomas Paul Raimondi, "unlawfully, willfully and corruptly" attempted to bribe John J. Bishop, Jr., a member of the Maryland State Senate, on and from November 27th, 1968 continually to and including December 18th, 1968, by offering to pay Senator Bishop a substantial sum of money to obtain the votes of of Republican members of the General Assembly of Maryland in favor of a gubernatorial candidate to be selected by the defendant or by those for whom the defendant was acting, to fill the unexpired term of former Governor, now Vice-President, Spiro T. Agnew.

At 2:00 P.M. on the same day that the indictment was returned, Charles E. Moylan, Jr., State's Attorney of Baltimore City, issued a statement which reads as follows:

FOR IMMEDIATE RELEASE

STATEMENT OF CHARLES E. MOYLAN, JR., BALTIMORE STATE'S ATTORNEY

Thursday, December 19, 1968, 2:00 P.M.

The Baltimore Grand Jury this morning returned a one-count indictment against local attorney Thomas Paul Raimondi. The indictment charges that during the time period of November 27, 1968, through December 18, 1968, Mr. Raimondi did attempt to bribe State Senator John J. Bishop, Jr. of the Fourth

Legislative District of Baltimore County.Mr. Raimondi,acting for himself and ostensibly for others, according to the charge, did offer Senator Bishop the sum of between $75,000 and $100,000. For that sum, Senator Bishop was to deliver the votes, including his own, of not less than twenty-five and up to all thirty-three of the Republican members of the General Assembly of Maryland in the forthcoming balloting in that General Assembly to select a gubernatorial successor to Vice-President-elect Spiro T. Agnew. Those votes were to be cast for a candidate to be named by Mr. Raimondi or by those for whom he was allegedly acting.

The investigation that led to today's indictment has been in progress for three weeks. Only six persons have been aware that the investigation has been going on – Senator Bishop himself; Colonel Robert J. Lally, Superintendent of the Maryland State Police; Governor Agnew; Judge J. Gilbert Prendergast of the Supreme Bench of Baltimore City; myself as State's Attorney; and Deputy State's Attorney George J. Helinski.

Senator Bishop was initially approached by telephone on November 27. He immediately communicated the bribe offer to Colonel Lally and to Governor Agnew. Senator Bishop then contacted the State's Attorney's Office of Baltimore City. Acting on the instructions of Colonel Lally, Mr. Helinksi, and myself, Senator Bishop pretended to go along with the scheme. A number of conferences between Senator Bishop and Mr. Raimondi were held throughout the ensuing three weeks, in automobiles, in a law office, and by telephone. On court orders applied for by myself and authorized by Judge Prendergast, most of those conversations were electronically recorded.

All of this information was communicated in my office earlier this afternoon to the following legislative leaders: President of the Maryland Senate William S. James, Senate Majority Leader Harry R. Hughes, Senate Minority Leader Edward T. Hall, Speaker of the House of Delegates Marvin Mandel, House Majority Leader Thomas Hunter Lowe, and House Minority Leader John S. McInerney.

Mr. Raimondi has been released on his own recognizance. His arraignment is scheduled for 10:00 A.M. tomorrow morning in Part I of the Criminal Court before Judge Charles D. Harris. In the interest of maintaining public confidence in our legislative process and of removing any taint of suspicion from many innocent persons, this office will ask Judge Harris to schedule this case for trial as expeditiously as possible, compatibly with the interests of justice.

Immediately prior to the public release of Mr. Moylan's statement, he had called a meeting of legislative leaders of the General Assembly, to confer in his office at 1:00 P.M. According to testimony adduced at a later Court hearing on June 23rd, 1969, Mr. Moylan advised the attending legislative leaders that electronic evidence incriminating the defendant had been obtained, and this evidence was outlined to those present in a "very general way". The prepared statement was not read by Mr. Moylan at the meeting, he made "no suggestion at all" as to guilt or innocence of the defendant, and he made no reference to any alleged admission or confession. There was testimony that Mr. Moylan believed that he had primary evidence of the defendant's guilt, but he did not make any flat statement that he thought that the defendant was indeed guilty. According to that testimony, Mr. Moylan also remarked that pre-trial publicity of the case should be kept "at a minimum".

The disclosure of the indictment against the defendant, and the sensational nature of the charges, coming only about three weeks before the interim Governor was to be elected by the General Assembly, resulted in immediate and extensive press, television, and radio coverage. This publicity continued on a broad basis until about the end of December, and finally tapered off in diminishing degrees by the first week in January of 1969. The election by the General Assembly of Governor Mandel on January 7th, 1969 appears to have ended the publicity, at least temporarily, and indeed much of the public interest concerning the indictment against Mr. Raimondi.

On February 9th, 1968, the defendant filed a motion to dismiss the indictment, alleging, in essence, that his case "has received so much publicity that he cannot obtain a fair trial anywhere in the State of Maryland *in the foreseeable future* . . . " (emphasis added). The motion then details Mr. Moylan's actions concerning his public announcements to the press, the television and radio news reporters, and "to all news media"; his assertion that there were electronic tapes in existence of alleged conversations between the defendant and Senator Bishop; Mr. Moylan's appearances before news cameras of the television stations and the repetition of "his improper and prejudicial statements", in full knowledge that such interviews would be shown on television stations "in Baltimore City and the metropolitan Washington area, thus reaching the entire public in the State of Maryland, including those persons who might be selected as jurors" in the event the case was tried, making it impossible for the defendant "to obtain a fair trial before an unprejudiced and impartial jury anywhere in the State of Maryland". The motion further details the extended coverage given the indictment in the news media. It finally avers that the defendant "is entitled to have his case tried in Baltimore City, where he was born and reared and where he has lived and worked all his life, and as a result of the aforementioned publicity such a trial in Baltimore City is now denied to him".

On June 23rd, 1969, a hearing was held in open court on the motion to dismiss the indictment. At that hearing, John S. McInerney, a leading Republican member of the House of Delegates, described the meeting called by Mr. Moylan on December 19th, 1968 at 1:00 P.M.; his testimony has been above summarized. Representatives of the local television and radio broadcasting stations, wire services, and local newspapers also testified as to the coverage by their media of the charges filed against the defendant. Mr. Raimondi also testified briefly, stating that he was first informed of the indictment on December 19th between 12:30 and 12:45 P.M., just prior to the meeting of the legislative leaders in Mr. Moylan's office. In summary, it appears from the evidence at the hearing that all of the Baltimore Television and radio coverages included, in varying degrees, all sections of Maryland except the westernmost counties. However, Marvin Beard, the chief of the local bureau of the Associated Press, testified that the Associated Press serves all of the thirteen daily newspapers in Maryland and Delaware, two daily newspapers in Washington, 81% of the television and radio coverage; and in addition, this coverage includes the cities of Salisbury and Oakland, the latter being located in Garrett County, the westernmost section of Maryland.

Following the hearing on June 23rd, 1969, extensive briefs were filed by both the State's Attorney and counsel for the defendant, the last brief having been filed only last month.

In addition to cases decided in other States and by the U.S. Supreme Court, counsel for the defendant have emphasized and apparently rely to a large extent upon several Maryland cases, particularly the case of *Grammer v. State*, 203 Md. 200, as to factual similarity. In the *Grammer* case, the then State's Attorney of Baltimore City, two Assistant State's Attorneys for Baltimore County, and two Baltimore County policemen appeared on a television broadcast eleven

days after the murder of the defendant's wife. The State's Attorney of Baltimore City commented only that the scene of the crime, as shown on the broadcast, was "correct". The commentators were the only other members of the group to speak during the program, although one of the commentators did state that "we are told tonight by Mr. Anselm Sodaro, State's Attorney for Baltimore City, who is here in the studios with us, that Mr. Grammer has been charged with the murder of his wife". In addition, there was evidence of extensive press, television, and radio coverage of the *Grammer* case. Although the Court of Appeals held that the appearance of the State officials on the television program was improper, and adversely criticized other pre-trial actions of public officials in connection with the case, it held that such actions did not so prejudice Grammer's rights as to prevent him from having a fair trial, stating that "it is not to be presumed that an unbiased jury cannot be had", and that "the requirement of due process has not been offended in this case" The conviction and death sentence were affirmed.

In *Baltimore Radio Show v. State,* 193 Md. 300, a local radio reporter publicly broadcast, two days after a child had been murdered, the full details of the murder and the confession of Eugene James, who had been arrested for the crime. The broadcast detailed how the police located the alleged murderer, that he "admitted that crime . . . and consented to accompany the police to the scene. On the ground, said the police, he made a more detailed admission". On the same night, the then Police Commissioner for Baltimore City publicly announced that "the killer of little Marsha Brill is now in custody" and identified "the killer" as Eugene James. The subsequent conviction of the reporter and three radio broadcasting corporations for contempt of court was reversed by the Court of Appeals, even though James' attorney testified, at the contempt trial, that he felt the pre-trial publicity prevented him from obtaining an impartial jury to try James. Nothing that has been said by Mr. Moylan or any other public official regarding the *Raimondi* case can

approach, in possible prejudice, the publicity which preceded the *James* trial.*

A review of the other relevant Maryland cases show similar decisions by the Court of Appeals in cases concerning alleged prejudicial pre-trial publicity, although in less sensational factual situations. See *Basiliko v. State,* 212 Md. 248; *Piracci v. State,* 207 Md. 499; *Wanzer v. State,* 202 Md. 601; *Newton v. State,* 147 Md. 71; *Downs v. State,* 111 Md. 241.

Counsel for the defendant also rely upon the nationally sensational case of *Sheppard v. Maxwell,* 384 U.S. 333, decided by the U.S. Supreme Court June 6th, 1966. The opinion of the Supreme Court in *Sheppard* recites in great detail the patently prejudicial pre-trial publicity which preceded the defendant's trial, and the "bedlam" which "reigned at the courthouse during the trial" itself. The pre-trial publicity of the charges filed against Mr. Raimondi, emanating from Mr. Moylan, cannot be compared in any manner with the prejudicial pre-trial publicty of the *Sheppard* case, which included the televising of a two-day pre-trial hearing. In the case of *Estes v. Texas,* 381 U.S. 532, the Supreme Court reversed the conviction despite the absence of any showing of prejudice. However, as in *Sheppard,* the intensive pre-trial publicity was aggravated by the televising of the trial itself, and was of such an extensive nature that prejudice must necessarily be inferred. The case of *State v. Raimondi* has not yet been tried, so most of the prejudicial background of *Sheppard* and *Estes* is inapplicable to this case.

In summary, it is the opinion of this Court that the pre-trial publicity in this case cannot be compared to the

*The pre-trial publicity in the *James* case was not alleged as prejudicial grounds, on his appeal, for a reversal of his conviction of murder in the first degree and sentence of death, which were affirmed in *James v. State,* 193 Md. 31.

situations in *Sheppard, Estes,* and other cases cited by the Defendant. Nor did Mr. Moylan's statements contravene the fair trial principles laid down by the Supreme Court in *Sheppard* and *Estes*. A careful reading of those opinions reflect emphasis on the conduct of the trial itself, particularly the "carnival atmosphere" of the *Sheppard* trial *following* the prejudicial pre-trial publicity. In fact, the opinion in *Sheppard* concludes with the statement that "since the state trial judge did not fulfill his duty to protect Sheppard from the inherently prejudicial publicity which saturated the community and to control disruptive influences in the courtroom, we must revers the denial of the habeas petition." The case of *State v. Raimondi* has not even reached the trial stage, and probably will not do so for some months to come.

In retrospect, it would have been preferable if Mr. Moylan had limited his public comments to the charges as stated in the indictment, which is a public record, and had not elaborated on the pre-indictment investigation of Mr. Raimondi's alleged actions. Television comments by a State's Attorney regarding a pending case have also been proscribed by the Court of Appeals as "a manifest impropriety". *Grammer,* p. 210. But have these actions made it impossible for Mr. Raimondi to obtain a fair trial anywhere in Maryland? Under the present day discovery rules, the details of the pre-indictment investigation by the State's Attorney would unquestionably have been demanded by defense counsel, and just as unquestionably, these details would have been supplied the defendant in writing and as part of the public record of the case, available to anyone who cared to look at the Court file. Maryland Rule 728. It should also be noted that Mr. Moylan's public statement of December 19th, 1968 states, at its beginning, that the grand jury's "indictment *charges* that . . . Mr. Raimondi did attempt to bribe State Senator John J. Bishop, Jr., . . . " (emphasis added). As Mr. Justice Clark said in the case of *Irvin v. Dowd,* 366 U.S. 717:

> "It is not required, however, that the jurors be totally ignorant of the facts and issues involved. In

these days of swift, widespread and diverse methods of communication, an important case can be expected to arouse the interest of a public in the vicinity, and scarcely any of those best qualified to serve as jurors will not have formed some impression or opinion as to the merits of the case. This is particularly true in criminal cases. To hold that the mere existence of any preconceived notion as to the guilt or innocence of an accused, without more, is sufficient to rebut the presumption of a prospective juror's impartiality would be to establish an impossible standard. It is sufficient if the juror can lay aside his impression or opinion and render a verdict based on the evidence presented in court. *Spies v. Illinois*, 123 U.S. 131; *Holt v. United States*, 218 U.S. 245; *Reynolds v. United States*, supra.

There are other and more practical reasons why, in the opinion of this Court, the defendant can obtain an impartial jury and a fair trial in Maryland, despite the pre-trial publicity which has been described in this opinion.

First, the criminal offense with which Mr. Raimondi is charged is not a crime of violence that inflames public indignation. It is not remotely comparable, in the public mind, to the cold-blooded, premeditated murders which inflamed the news media and the public in the *Sheppard*, *Grammer*, and *James* cases. The American public seems to be fairly well insulated against charges of public misconduct, or attempts to influence elections by bribery. There is no public indignation, for example, over the politically accepted fact that it is practically impossible for anyone without private wealth or substantial financial backing, or both, to be elected to any high State or national office.

Secondly, the lapse of time between the indictment and the eventual trial has already been substantial. The event – the election of a Governor – has been past history for nine

months, and the trial itself, when held, will probably be at least a year after the indictment was returned. It is only natural that public interest in this case has now substantially subsided, and will continue to subside with the passage of more time. This is very unlike the situation in the *Grammer* case, when the defendant was tried only fifty-five days after the murder had been committed. In the *James* case, which was the subject of the pre-trial publicity discussed in *Baltimore Radio Show, Inc. v. State, supra*, the defendant was tried only seventy-six days after the murder had been committed.

Thirdly, to eliminate any remote possibility that Mr. Raimondi cannot have a fair trial before an impartial jury in Maryland, there are several well defined and approved methods available to him, such as the standards stated by Mr. Justice Clark in *Sheppard*, pages 358-360 of the opinion. These and additional standards of trial conduct are discussed in the recently published *Free Press and Fair Trial*, by Donald M. Gillmor, Chapter 10, "Judicial Remedies", particularly pp. 124-141. See also *The Rights of Fair Trial and Free Press*, an information manual just published by the American Bar Association Legal Advisory Committee on Fair Trial and Free Press, pp. 4-19. These publications were compiled *after* the U.S. Supreme Court decisions in *Sheppard, Estes*, and similar cases, and set forth in considerable detail the newly approved standards governing not only pre-trial publicity, but the conduct of the trial itself. The assurance of a fair trial is indicated by the use of the following courses of actions available to the Court and the parties.

1. *Change of venue.*

The defendant in this case has a constitutional right (Maryland Constitution, Article IV, Section 8) to ask the Criminal Court of Baltimore to remove his case to some other jurisdiction for trial. It is conceded that the State's Attorney of Baltimore City would not oppose, but would

approve, such a change of venue; and it is virtually assured that the judge or judges in the Criminal Court of Baltimore would grant such a removal. The defendant counters this suggestion by alleging that "he is entitled to have his case tried in Baltimore City, where he was born and reared and where he has lived and worked all of his life". This is not an absolute right of the defendant. The recent and still pending case of *State v. H. Rap Brown*, a non-capital case, was removed at the insistence of the State and over the opposition of the defendant, from the Circuit Court for Dorchester County to the Circuit Court for Harford County.* Earlier Maryland cases have accorded the State the right to remove a case to another jurisdiction. *Bullock v. State*, 230 Md. 280; *Jones v. State*, 185 Md. 481; *McMillan v. State*, 68 Md. 307. Thus, even though the defendant might prefer to be tried in Baltimore City, the State can legally remove the case to another jurisdiction to assure the defendant an impartial jury and a fair trial. The evidence at the hearing held June 23rd, 1969 indicates that none of the Baltimore and

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*After Judge Mace, in the Circuit Court for Dorchester County, signed the removal order on July 17, 1968, Brown filed a petition in the U.S. District Court for Maryland asking that Court to remove his case from State to Federal jurisdiction. On January 23, 1969, Judge Kaufman denied the petition and remanded the case to the Circuit Court for Harford County. In doing so, Judge Kaufman held that "the right of the State as well as of the defendant to seek removal in a non-capital case, and the power of the court to order removal upon the application of the State, are both clearly set forth" in the Maryland Constitution, the implementing statute in Maryland Code (Article 75, Section 44), and Maryland Rule 738. *State v. Brown*, 295 F. Supp. (1969) 63, later affirmed by the U.S. Court of Appeals, Fourth Circuit.

Washington television or radio broadcasting stations cover, for example, the far Western Maryland counties. It is conceded that there is daily newspaper coverage in the Western Maryland counties by the Associated Press. However, based upon the reasons which have been previously expressed in this opinion, and the other remedies available to the defendant which are discussed below, it is this Court's opinion that pre-trial newspaper coverage of the defendant's case *many months ago*, will not adversely affect his right to a fair trial in the westernmost Maryland counties.

2. *Peremptory challenges and Voir Dire.*

The defendant is entitled to extensive *voir dire* privileges which could elicit detailed information from prospective jurors as to possible prejudice, any prior knowledge or recollection of the charges filed against the defendant, or any preconceived opinions as to the defendant's guilt. In addition, the presiding judge could grant peremptory challenges for cause. The prospective jurors could even be examined individually and privately by counsel, in the presence of the defendant, in the presiding judge's chambers.

3. *The Conduct of the Trial.*

The American Bar Association manual sets forth the definite standards concerning the conduct of the trial by the presiding judge, including appropriate regulation of the use of the courtroom and other facilities of the Court by news media representatives, the sequestration of witnesses and the jury during the trial, the cautioning of the jurors that they must not "read, listen to, or watch any news reports" concerning the case during the trial, and finally, appropriate instructions to the jury at the conclusion of the trial. Maryland trial judges exercise extensive control over the trial of criminal cases, and the

use of the above precautionary measures should unquestionably guarantee the defendant an impartial jury and a completely fair trial.

4. *Waiver of Jury.*

The defendant, of course, has the constitutional right to waive a trial by jury. Fortunately, Maryland has some extraordinarily competent trial judges who are universally respected for their judicial ability and unquestioned integrity. The defendant, as a member of the Bar, obviously knows that this method of relief is also available to him, and that a competent trial judge would scrupulously protect his rights.

For the above reasons this Court finds that (1) the defendant has not been prejudiced by the pre-trial publicity following and resulting from his indictment by the Grand Jury of Baltimore City on December 19th, 1968, and including pre-trial statements made by the State's Attorney for Baltimore City; and (2) the defendant can obtain an unbiased, impartial jury, and a fair trial in any of the eight judicial circuits of Maryland. The motion to dismiss the indictment, therefore, is denied.

/s/
Charles D. Harris
JUDGE

September 26, 1969.

DOCKET ENTRIES
Criminal Court of Baltimore City

Docket 1968. September Term. Number 7866.
Charge: Attempt to Bribe.
Prosecuting Witnesses – John J. Bishop, Jr. & Col. Robert Lally.

December 19, 1968 – Presentment filed – e.d. – capias issued – Cepi, Bail.

December 19, 1968 – Recognizance taken – Own Recognizance.

December 19, 1968 – Indictment filed.

December 20, 1968 – Copy served – Receipt filed.

December 20, 1968 – Arraignment postponed to Dec. 30,1968, Harris, Jr.

December 30, 1968 – Appearance of Leon Pierson, filed.

December 30, 1968 – Arraigned and Pleads: Not Guilty.

January 28, 1969 – State's Petition and Order of Court thereon that the Clerk, Criminal Court make three (3) photocopy sets of all Petitions filed. Prendergast, J.

February 6, 1969 – Motion to Dismiss Indictment, filed.

February 6, 1969 – Memorandum in Support of Motion to Dismiss Indictment filed.

February 6, 1969 – Request for Hearing on Motion to Dismiss Indictment filed.

March 24,1969 – Order of Court that Defendant be permitted to leave State of Maryland temporarily filed. Harris, J.

June 17, 1969 – Defendant's Motion to take deposition, filed.

June 18, 1969 – State's Answer to Defendant's Motion to Dismiss filed.

June 23,1969 – Law Motion Argument heard and not conlcuded before Harris,J. (to be continued on 9 July, 1969).

July 2, 1969 – Memorandum in Support of State's Answer to Motion to Dismiss filed.

August 14, 1969 – Defendant's Reply to State's Memorandum, filed.

September 26, 1969 – Memorandum Opinion Denying Motion to Dismiss Indictment, filed. Harris, J.

October 7, 1969 – An Appeal to the Court of Special Appeals of Maryland from the Order denying the Defendant's Motion to Dismiss Indictment, filed.

November 6, 1969 – Petition and Order thereon that the time for transmitting the Record on Appeal to the Court of Special Appeals of Maryland be extended to and including 5 January, 1970. Harris, J.

November 12, 1969 – Transcript of Testimony filed. Transcript No. 3687.

December 10, 1969 – Transcript of Record transmitted under seal to the Clerk of the Court of Special Appeals of Maryland and certified copy of Transcript of Record transmitted under seal to Francis B. Burch, Attorney General of Maryland.

January 27, 1970 – Mandate: Court of Special Appeals of Maryland. No. 471, September Term 1969. Thomas Paul Raimondi v. State of Maryland. Appeal from the Criminal Court of Baltimore. November 12, 1969: Motion to Dismiss

Appeal filed by Appellee. December 11, 1969: Answer to Motion to Dismiss Appeal filed by Counsel for Appellant. December 12, 1969: Transcript of Record, filed. January 23, 1970: Opinion by Murphy, C.J. Appeal dismissed; costs to be paid by Appellant; the Mandate of this Court to issue forthwith.

February 24, 1970 – Motion for Discovery, filed.

February 27, 1970 – State's Answer to Motion for Discovery, filed.

March 25, 1970 – Copy of Order of the Court of Appeals of Maryland Misc. Docket No. 271 denying the Petition for a Writ of Certiorari, filed. Hammond, C.J.

April 7, 1970 – Primary Points and Authorities in Support of Electronic Surveillance filed by State.

April 7, 1970 – Defendant's Motion to Suppress Tapes, filed.

April 9, 1970 – State's Answer to Defendant's Motion to Suppress Tapes, filed.

April 9, 1970 – Defendant's Memorandum in Support of Motion to Suppress, filed.

April 9, 1970 – SX-1 (Judge Prendergast's Order in the Tumminello case) filed.

April 15, 1970 – State's Amended Answer to Motion for Discovery, filed.

April 16, 1970 – Motion to Suppress Tapes, denied. Thomas, J.

April 16, 1970 – Memorandum of Maryland State Police by Trooper Graham, filed.

April 17, 1970 – Original Order signed by Prendergast, J. Six (6) envelopes marked 21 thru 26, filed.

April 20, 1970 – Re-arraigned and pleads: Not Guilty. Jury Trial elected.

April 20, 1970 – State's and Defendant's Requested Voir Dire Questions, filed.

April 20, 1970 – Submits under plea: Not Guilty and Issue before Sworn Jury. Makey, J.

April 20, 1970 – Not concluded and resumed on 21 April 70.

April 21, 1970 – Not concluded and resumed on 22 April 70.

April 22, 1970 – Not concluded and resumed on 23 April 70.

April 23, 1970 – Oral Motion for Judgment of Acquittal after State's case denied. Mackey, J.

April 23, 1970 – Not concluded and resumed on 24 April 70.

April 24, 1970 – Oral Requested Instructions to the jury in behalf of State made in open Court.

April 24, 1970 – Motion for Judgment of Acquittal at the end of the entire case, filed, heard and denied. Mackey, J.

April 24, 1970 – Requested Instructions to the jury on behalf of Defendant, filed.

April 24, 1970 – Verdict: Guilty.

April 24, 1970 – Sentence deferred pending the filing of a Motion for a New Trial. Mackey, J.

April 24, 1970 – Defendant released on Own Recognizance. Mackey, J.

April 27, 1970 – Motion for a New Trial, filed.

June 29, 1970 – Probation Report, filed.

August 31, 1970 – Motion for a New Trial heard and denied. Mackey, J.

August 31, 1970 – Judgment: Eighteen (18) months under the jurisdiction of Dept. of Correctional Services dating from 31 August, 1970 and fined $500.00 and court costs, to run consecutively.

August 31, 1970 – Defendant released on his own recognizance pending an Appeal to the Court of Special Appeals of Maryland. Mackey, J.

August 31, 1970 – An Appeal to the Court of Special Appeals of Maryland, filed.

September 30, 1970 – Petition and Order thereon that the time for transmitting the Record on Appeal to the Court of Special Appeals be extended to and including 27 November, 1970. Sklar, J.

November 13, 1970 – Transcript of Testimony filed. Transcript No. 4017.

November 23, 1970 – Transcript of Record transmitted under seal to the Clerk of the Court of Special Appeals of Maryland and certified copy of Transcript of Record transmitted under seal to Francis B. Burch, Attorney General of Maryland.

July 26, 1971 – Mandate: Court of Special Appeals of Maryland No. 554, September term, 1970 Thomas Paul Raimondi v. State of Maryland Appeal from the Criminal Court of Baltimore Filed: November 24, 1970; December 10, 1970: Request to enter appearance filed by Russell, J. White, Esq., as co-counsel for appellant. June 23, 1970–Opinion by Thompson, J. Judgment affirmed. Appellant to pay costs.

July 27, 1971 – Release defendant on Own Recognizance pending disposition of Writ of Certiorari by the Court of Appeals of Maryland. Thomas, J.

July 27, 1971 – Defendant released on own recognizance pending disposition of Writ of Certiorari by the Court of Appeals of Maryland.

August 18, 1971 – Oral Motion for Reduction of Sentence, hearing held in Chambers in Elkton, Maryland. Unsworn testimony of wife of defendant heard and argument of defense counsel made. State was not present. Matter taken Sub Curia. Mackey, J.

August 20, 1971 – Motion for reduction of sentence denied. Mackey, J.

November 10, 1971 – Copy of Writ of Certiorari issued by the Court of Appeals of Maryland to the Court of Special Appeals of Maryland commanding the Records in the captioned appeal. Also is enclosed a copy of an Order of the Court of Appeals of Maryland directing that the case shall be transferred to the Court's regular docket as No. 281, September, 1971, filed.

November 12, 1971–Record re-transmitted to the Court of Special Appeals of Maryland.

April 10, 1972–Petition to be released in own recognizance pending appeal to the Supreme Court of the United States filed.

April 10, 1972–Order of Court that defendant – Thomas Paul Raimondi is hereby allowed to continue on his own recognizance and further ordered he be deferred from his prison sentence until such time the Supreme Court of the United States has ruled upon his petition for Certiorari, filed. Grady, J.

April 11, 1972 – Recognizance taken – Own Recognizance.

May 12, 1972 – Mandate: Court of Appeals of Maryland, No. 281, September Term, 1971. Thomas Paul Raimondi v. State of Maryland. April 4, 1972 – Judgment affirmed. Opinion filed. Singley, J. May 1, 1972: Motion for Reargument, filed. May 8, 1972: Motion denied.

TESTIMONY

JOHN J. BISHOP, JR.

DIRECT EXAMINATION

* * * * * * *

(T. 250)***sat in on a meeting. He indicated to me that – I'm trying to get this straight – I had two conversations with him that day and I'm trying to separate the two – this was pretty much the course of the conversation. There were several references that I had made to Dale Anderson and he would follow it up and answer my question when I would say have you met with Dale or something to that effect, he would respond to it without any negative response.

(By Mr. Kiel) Q. Now, did you ask Mr. Raimondi whether or not Dale knew that he was dealing with you? A. Yes, he told me that, that no he wouldn't do that. That he said – I think in that conversation he told me that Bill knew that he was dealing with me and that I was concerned about it – that might have been either that conversation or the one I had later that day.

Q. Now, Senator, when you refer to Bill, who do you mean? A. Mr. Adelson.

Q. And when you refer to Dale who do you mean? A. Dale Anderson. Dale Anderson was one of the candidates of the ten who I mentioned, who was from Baltimore (T. 251) county."

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(T. 628) THOMAS PAUL RAIMONDI

DIRECT EXAMINATION

* * * * * * * *

(The Witness) In my total frustration to get rid of this web of deceit that I have suddenly woven, I failed because suddenly Senator Bishop became the aggressor. I recognized that he had a stronger personality than I had and I became very fearful. I said, "God, this man has spent that money." I had made promises. I said, "Jim, I think this man has spent $75,000.00." I told him, "this man has spent this money."

Q. (By Mr. Pierson) In point of fact, did you call him on these occasions or were most of the calls from him? A. I called him back, I think on two occasions only because he would constantly call my wife, my children, my mother, my

secretary. He would never leave me alone. He called and called, you can see on the tapes, he never left me alone. I mean, I never saw anybody. If he had never called me again I would have never bothered him, Mr. (T. 629) Pierson. He never left me alone. I didn't know how to deal with the man. Instead of saying to him as I should have – instead of being honest, I made up the whole, stupid story. I have no friends. I started developing something I made up. I was trying to stall him. I remember saying, when my candidate withdraws – I said to myself God, let somebody withdraw. I was hoping some candidate would withdraw and then I could tell him that was the candidate, but nobody got out of the race and I was stuck.

* * * * * * *

(T. 692) (The Witness) I recall the next morning when I was being arraigned, your boss talked to me, Charles Moylan, State's Attorney, Baltimore City – do you want to take notes?

(Mr. Pierson) Go ahead.

(The Witness) We were sitting in Criminal Court Part I, surrounded by the press, sitting where the Madam Forelady is, I believe, and my law partner was sitting there (indicating). The State's Attorney walked up to me and said, "Tom, can I talk to you off the record? We have been friends for a long time. Do me a favor and don't do this to Florence and the children. Don't carry this burden on your shoulders. Give me Dale and Bill, give me Dale and Bill." I looked at him and I said, "Charlie, this whole business is the greatest charade ever perpetrated. If you had called me I would have told you. You've gone to the grand jury and this thing is just a charade. What have you done, you've destroyed me. How can I give you people that don't exist?" I remember, Mr. Moylan turned white."

PROCEEDINGS

(SUMMATION TO THE JURY IN REBUTTAL BY MR. KIEL)

Madam Forelady and Members of the Jury, I do not wish to test your patience I will not speak to you at great length. I have said pretty much everything I want to say.

Also, I would like to say to you there is great demand for people who can make wrong appear to be right. Mr. Pierson has undertaken to do just that today. And I suggest to you that he has not done that and he has not done that because he has used one phrase in this argument to you which really is the heart of the entire case.

Mr. Pierson has said to you that you can only tell people by what they do. Now, isn't that right? Can't you really tell people by what they do? Isn't it simply an expression of what they do, and what they say, and isn't this the real test of what went on in this case? You can tell what Raimondi did by what he said, and what he said is just completely frozen for all time. You have the benefit of that in this case. You can only tell people by what they do.

(T. 2) Let me discuss very briefly the defense of entrapment in this case, if that gives you any trouble at all.

Ever since it has become the job of law enforcement officers to catch criminals stratagems have been used. Now, the real line to be drawn, is whether or not there was entrapment in this case. Whether or not there was a trap for the unwary innocent or was there a trap for the unwary guilty.

Now, was Mr. Raimondi a totally innocent who had to be lured and incited and pushed into committing this crime without any evidence at all of his own guilt and own

intention of committing a crime, or did Senator Bishop and the rest of the law enforcement officers in this case simply lay a trap for the guilty, in he walks slipshod and here he is today.

Is that what really happened in this case? Can you believe for one minute that the law enforcement officers manufactured in their own minds, created this crime, and then, out of this, design to get somebody into their trap, pushed Mr. Raimondi into committing (T. 3) this crime that they manufactured so that they could have Mr. Raimondi as a victim to bring in before you and prosecute? Now, is that what really happened in this case?

I have the greatest confidence in this jury that you will not so find that that is what happened in this case. If you were to believe that, you would have to believe that all of the people involved in the investigative process were a part of this entrapment plan; that Senator Bishop, Colonel Lally, Suzanne Bishop, then Governor Agnew, Judge Prendergast, Charles Moylan, George Helinski, Sergeant Milton Taylor, all of these people would have had to have a common purpose in their minds to push Raimondi into the trap; push Raimondi into committing a crime that he didn't have any intention of committing. Can you really believe that all of these people are in a gigantic conspiracy to push Raimondi into trap?

Let's talk about entrapment. Isn't it a fact that if Senator Bishop pushed Raimondi into committing this crime they were taking one heck of a risk when taping these conversations? Suppose these tapes (T. 4) revealed what Mr. Raimondi said they should have revealed? Then everybody would have really said to Senator Bishop, "You indicate to me that you want to sell your votes, and you indicate to me you can go out and get 24 or 25 votes."

Now, wouldn't that be a high risk, for those tapes to show that kind of conversation, if that is what really

happened? If Senator Bishop was supposed to initiate this entire scheme?

Let's take a very brief look at our transcript and see how this ball really got rolling. Look at page two. Well, Mr. Raimondi says, ..." Jumpy? Do you think I got a microphone?" ... Now, is that the kind of conversation that indicates that Senator Bishop would have a microphone and that Senator Bishop was the one who was supposed to be taping the conversation where Raimondi says... "Jumpy? You think I have got a microphone?" ...

Take a look at page eight and nine, if we may, at the bottom of the page,,.. "Right. At the same time I think the figure three thousand dollars is the top figure unless you want to come back with a counter proposal." ... Doesn't the use of the term counter proposal (T. 5) by Raimondi indicate that there must have been a proposal by Raimondi by the way he was looking to see if Bishop would come back with a counter proposal? That indicates the real direction of the plot. In this case it was from Raimondi to Bishop.

Now, if you will take a look at page 56 of the transcript, line 8, ..."I.ve been carrying orders back and forth for two weeks and Christ, this embarrases me, Jack." ... Didn't that indicate to you who did what in this thing? Raimondi is the one carrying orders back and forth. He's the initiator of this whole thing.

Let's take a look at page 60 of the transcript in the middle of the page at line 13, ..."Damn, if I went by your timetable _____. You came to me and told me_____. (Raimondi) Jack, I'm going by their timetable, and that's whats got me angry because they had said to me well we need till January 1st or 25th of December, or the 26th of December. They said they would give me chapter and verse yesterday, and I'm the guy that gets to bed 6 o'clock this morning, and Christ, (T. 6) Jack, here I am

telling you, I don't know what to hell I'm talking about _____."

Let's take a look at page 68. I'm sorry you don't have page 68 designated with a little number five in the upper left-hand corner. Down toward the bottom at line 15, where Bishop says, "As I said I wish you hand't come to me originally." Raimondi says, "I apologize, Jack. I apologize for coming to you because I think they had the cart before the horse." Now, don't those conversations, ladies and gentlemen, really indicate in sum total who started this whole thing? "I apologize for coming to you, coming to you originally." Those are the facts as they are frozen in the minds and on tapes here today, and clearly indicates where the conversation was initiated.

Now let me just tell you and explain and analogize for you the nature of the defense you saw put on here in this courtroom, and see if this isn't a logical way to attack the State's case and I give the defense credit for this. You are confronted with knowing what the State's prosecution is going to be and you know that going into evidence there are going to be certain tape conversations (T. 7) just in a way you can deny that conversation took place; these actual words took place in conversation.

Now, you are going to get hit right between the eyes with this, so, what defense do you put on to a jury to explain away the frozen facts in this transcript? These tapes took real thinking. You know what was decided upon, decided that several things had to happen in this case.

First of all, get clear such names as Adelson and Anderson, because they want to have their names besmirch them, parade them in, got to have them say anything, "I didn't do anything. Look at me public, I'm all clean." That takes care of what they really had to apply in the defense.

What about Raimondi? What are you doing for him? He's got to have some defense in this thing. What can they possibly tell the jury? What is the only way to get out from under this, and the only possible way is to admit the truthfulness of the conversation that you had before you. Not deny, not dispute those. And the only way that you can get around it is to say, "Yes, I said that, (T. 8) but it wasn't true. It was a big hoax." Now, ladies and gentlemen, the hoax was on the stand this week, not in November or December 1968.

Now, there are three possibilities in this case. One possibility is that you believe that Anderson, Adelson and Raimondi were in this thing up to their ears and the offer was made with all of them parties. If you believe all of that, you can still find Mr. Raimondi guilty. The second possibility is that Anderson and Adelson really did not know anything about it, but that Raimondi on his own was out soliciting votes. If he managed to get John Bishop and the 33 votes, he was going to people he knew would capitalize on such a thing. He knew if he brought these votes, Adelson would know just what to do. He knew Anderson if tendered 33 votes would know just what to do with them. So, the second possibility is that they didn't know anything about Raimondi trying to procure the vote himself.

The third possibility is that the entire thing was a hoax. Raimondi told you it was a hoax, but I tell you that when Raimondi took the stand he not only (T. 9) flubbed the errand he was sent on in December 1968, he flubbed pulling off the hoax. He went too far in his defense when he said there was a giant conspiracy. Now, that is not consistent with this being a hoax. He went a little too far saying Bishop was a liar, as God is my judge, Bishop is a liar. That is going too far. What he really had to be saying was, Bishop is telling the truth in everything he tells you, but it was a hoax. But instead of that he wants you to believe that Bishop is a liar and a double talker. That goes too far. That is not consistent with the line of defense of this case. So, he's flubbed this thing.

Now, what happened here, the State has been able to lay bare a scheme of enormous magnitude. A scheme of such a nature that the integrity of the entire government of the State of Maryland is at stake.

Fortunately for us, that scheme went first to Senator Bishop. He took it to the State of Maryland. It was passed on to the State's Attorney's office of Baltimore City and that scheme has laid in this office for 17 months, and I now pass this scheme on to you and I pass the integrity of the entire State of Maryland on to (T. 10) you and your conscientiousness, and the state now puts it in your hands. I'm absolutely certain you will not betray that by finding a verdict of not guilty in this case.

Who we really have on trial today is Thomas Paul Raimondi. Thomas Raimondi, the unsuccessful candidate for congress. Thomas 'Raimondi, the unsuccessful recipient of funds from the Nixon-Agnew campaigning. Thomas Raimondi, the unsuccessful errand boy of Bill Adelson, unsuccessful corruptor of Jack Bishop. Thomas Raimonid, the unsuccessful poisoner of the well of the governor of the State of Maryland.

Ladies and gentlemen, if you feel any sympathy for Thomas Raimondi because of his display on the stand, let me tell you this. Thomas Raimondi drew the wine from the cask. Thomas Raimondi now finds that the wine he has drawn from the cask is bitter wine. But, nevertheless, he has drawn the wine. It is now time for Thomas Raimondi to drink the wine at the bar of justice. There can be no sympathy in this situation.

If you should ever find that Thomas Raimondi is not guilty of this crime, the figure of justice (T. 11) standing on a pedestal with the mask over its eyes, holding aloft the scales of Justice, should be completely torn down and what we should substitute for that figure is the form of The Hag From Hell.

I further say to you ladies and gentlemen, that these are the last public words that will be spoken against Thomas Raimondi. These are the last words that will be heard against Thomas Raimondi until I hear from the lips of the forelady the one eloquent word that frees the outrage of this State and the outrage of this jury. That one eloquent word against Thomas Raimondi will be guilty.

Thank you.

* * * * * * *

(T. 850) "(The Court) Now, Mr. Pierson wants it made clear that he objects to the giving of the transcript to the jury during the closing argument for the same reasons he objected to the introduction of the transcripts, all along. That objection is noted and overruled.

(Mr. Spahn) We also object to the jury taking the copies of the transcript into the jury room with them, and we object to the jury being given the transcript during the closing argument.

(The Court) Yes. Your objection is overruled. I thought I had covered that.

Now, I also plan to instruct the jury that they may, if they wish, take any exhibits that are in evidence in the jury room with them for their consideration during their deliberations. Do you object to that?

(T. 851) (Mr. Pierson) Not as long as they are not those particular exhibits.

(The Court) The exhibits that are in evidence. I know you object about those transcripts but do you have any additional objections?

(Mr. Pierson) No, sir.

(The Court) I think we are clear on that now.

(Mr. Pierson) Take both sets, defendants and State's exhibits.

(The Court) Of course.

Now, Madam Forelady and Members of the Jury, you will be free to take to the jury room with you any of these exhibits that have been introduced into evidence by either the State or the defendant, and you may request either all or certain ones, before you retire.

(Madam Forelady) We want all the exhibits.

(The Court) Very well."